

## **MEMORANDUM**

**To:           House Committee on Natural Resources and Environment**

**From:       Wayne R. Allen, Deputy Legislative Counsel**

**Date:        9 March 2005**

**Re:          Salient features of Georgia natural resources law**

This memorandum, prepared pursuant to request of Honorable Lynn Smith, Chairperson of the House Committee on Natural Resources and Environment, is intended to: (1) summarize the sources of authority for Georgia laws which regulate natural resources; (2) list salient Georgia statutes relating to natural resources generally which are of likely interest to the House committee; and (3) provide a very brief summary of the doctrines of Georgia water law in particular.

### **I. Sources of authority for Georgia natural resources laws.**

#### **A. Inherent police power of the state to protect or promote public health, safety, or general welfare.**

In Pope v. Atlanta, 242 Ga. 331 (1978), cert.denied, 440 U.S. 936 (1979), the Georgia Supreme Court addressed a constitutional challenge to the Metropolitan River Protection Act (Ga. L. 1973, p. 128 et seq., as amended by Ga. L. 1975, p. 837). That Act made it unlawful to build within a particular stream corridor under certain conditions and was based upon the police power of the state. The plaintiff in that case, who had been denied the right to build a tennis court within a stream corridor, alleged that the Act violated her state due process rights and was an exercise of eminent domain. The court upheld the statute as a valid exercise of the state's police power to regulate the use of privately owned natural resources and distinguished that power from the power of eminent domain as follows:

The inherent police power of the state extends to the protection of the lives, health and property of the citizen, and to the preservation of good order and public morals and is not subject to any definite limitations, but is coextensive with the necessities of the case and the safeguard of public interest. McCoy v. Sanders, 113 Ga. App. 565 (148 S.E.2d 902) (1966). Further, in the area of environmental legislation, the state Constitution specifically authorizes the General Assembly "to provide restrictions upon land use in order to protect and preserve the natural resources, environment and vital areas of this State." ....

The distinction between use of eminent domain and use of the police power is that the former involves the taking of property because it is needed for public use while the latter involves the regulation of the property to prevent its use in a manner detrimental to the public interest.... Many regulations restrict the use of property, diminish its value or cut off certain property rights, but no compensation for the property owner is required.... This court tests regulation of property to determine that the government has not exceeded its police power, for excessive regulation of property violates the due process clause [of the Georgia

Constitution], and the [Constitutional] prohibition against taking property for public use without compensation.... In Vinson v. Home Builders Assn., *supra*, this court stated that exercise of the police power was subject to the limitation that the ordinance bear some "reasonable relation" to the public health. In Barrett v. Hamby, *supra*, this reasonableness standard was further articulated as the requirement that a zoning classification "may only be justified if it bears a substantial relation to the public health, safety, morality or general welfare." 235 Ga. at 265.... This approach essentially balances the state's interest in regulation against the landowner's interest in the unfettered use of his property. We adopt a balancing test for the type of police power restriction on property involved in this case.

Pope, 242 Ga. at 333-334.

## **B. Express Constitutional authorization for statutory regulation of natural resources.**

As noted by the Georgia Supreme Court in Pope, *supra*, the Georgia Constitution specifically authorizes the General Assembly to regulate the use of natural resources:

Paragraph I. General powers.

The General Assembly shall have the power to make all laws not inconsistent with this Constitution, and not repugnant to the Constitution of the United States, which it shall deem necessary and proper for the welfare of the state.

Paragraph II. Specific powers.

(a) Without limitation of the powers granted under Paragraph I, *the General Assembly shall have the power to provide by law for:*

*(1) Restrictions upon land use in order to protect and preserve the natural resources, environment, and vital areas of this state....*

Ga. Const. art. III, sec. VI, par. I & II (emphasis added).

## **II. Georgia statutes relating to natural resources generally.**

Pursuant to the state's inherent police powers and the express constitutional grant of authorization, the General Assembly has enacted numerous laws relating to use of natural resources. With the understanding that the assignment of bills to committee is within the discretion of the Speaker of the House of Representatives, House Rule 54.1, and with the further understanding that on occasion there may be some overlap of jurisdiction with other House committees, it may be stated that most of those statutes which might particularly interest the House Committee on Natural Resources and Environment are codified in Title 12 of the Official Code of Georgia Annotated, while several others of significance may be found in other titles of the Code. A list of such salient Code provisions, current through the 2004 Extraordinary Session of the General Assembly, is attached to this memorandum as *Appendix A1*.

## **III. Georgia water law doctrine.**

Because they have been the focus of much recent state legislative activity and remain a subject of heightened public interest, a brief special word about Georgia water laws in particular seems warranted here.

The applicable doctrine of water rights law differs according to the source of the water and the amount of withdrawal.

### **A. Surface waters.**

**1. Withdrawals not exceeding 100,000 gallons per day.** As applied to withdrawals of surface waters of not more than 100,000 gallons per day (gpd), Georgia water law generally follows the *Riparian Rights doctrine*. See O.C.G.A. §§ 44-8-1 & 51-9-7; Price v. High Shoals Mfg., 132 Ga. 246 (1909) (riparian proprietors have a common right in the waters of a stream, and necessities of the business of one cannot be the standard of the rights of another, but each is entitled

to reasonable use of the water with respect to the rights of others); Pyle v. Gilbert, 245 Ga. 403 (1980) (right of the lower riparian to receive the natural flow of the water without diversion or diminution is subject to the right of the upper riparian to its reasonable use).

**2. Withdrawals exceeding 100,000 gallons per day.** As applied to withdrawals of more than 100,000 gpd, since 1977 Georgia's surface water law has been a form of the *Regulated Riparian doctrine*, which regulates such use through the issuance of permits. See O.C.G.A. § 12-5-31.

## **B. Groundwater.**

**1. Withdrawals not exceeding 100,000 gallons per day.** Georgia law applicable to withdrawals from ground water sources of less than 100,000 gpd is largely case law, and the results may be somewhat ambiguous. "Taken on its face, the [ground] water law arguably adheres to a *modified Absolute Dominion doctrine*...." Bomar, Robert S., Dep. Ga. Att'y Gen., "Georgia Water Law"; see Stoner v. Patten, 132 Ga. 178 (1909) (owner of realty has title downwards and upwards indefinitely); Saddler v. Lee, 66 Ga. 45 (1880) (percolating water which "filters from the land of one proprietor to that of another, gives the latter no rights thereto which the law can recognize"); St. Armand v. Lehman, 120 Ga. 253 (1904) (malice of neighbor in wasting or diverting underground water must be shown in order to enjoin neighbor in blasting well on adjoining lot which might destroy petitioner's mineral spring). "The above case law resulted from a lack of knowledge of how underground water behaves. Consequently, by disregarding the riparian principle of 'natural flow subject to reasonable use,' the courts have created a situation where the strongest pump wins." Bomar, supra.

**2. Withdrawals exceeding 100,000 gallons per day.** For withdrawals of ground water exceeding 100,000 gpd, since 1972 Georgia's ground water law has been a form of the *Regulated Reasonable Use doctrine*, which regulates such use through the issuance of permits. Bomar, supra; see O.C.G.A. §§ 12-5-96 & 12-5-105.

**C. Tidewaters.** Water rights in tidewaters are distinctly different. Unlike the beds of nonnavigable streams which belong to the owner of the adjacent land, O.C.G.A. § 44-8-2, the State of Georgia lays claim, as successor to the Crown of England and under the common law, to ownership of the beds of all tidewaters within the jurisdiction of the State of Georgia, id. § 52-1-2 (emphasis added). As such, "the State of Georgia, as sovereign, is trustee of the rights of the people of the state to use and enjoy all tidewaters which are capable of use for fishing, passage, navigation, commerce, and transportation, pursuant to the common law *public trust doctrine*." Id. § 52-1-2 (emphasis added).

The texts of pertinent sections of the Official Code of Georgia Annotated specifically relating to riparian rights, regulated riparian rights, regulated reasonable use of ground water, and the public trust doctrine for tidewaters, current through the 2004 Extraordinary Session of the General Assembly, are attached to this memorandum as **Appendix A2**.

**APPENDIX A1:**  
**A LIST OF SALIENT GEORGIA NATURAL RESOURCES LAWS**  
**BY CODE TITLE**

**TITLE 12**  
**CONSERVATION AND NATURAL RESOURCES**

**CHAPTER 1**  
**GENERAL PROVISIONS**

- 12-1-1. "Department" defined.
- 12-1-2. References to administrative law judge or hearing officer; references to final decision of Board of Natural Resources; filing request for administrative review.

**CHAPTER 2**  
**DEPARTMENT OF NATURAL RESOURCES**

**Article 1**  
**General Provisions.**

- 12-2-1. Department created; commissioner of natural resources; affirmation of board decision by operation of law; appellate review.
- 12-2-2. Environmental Protection Division; Environmental Advisory Council; duties of council and its members and director; procedure for aggrieved persons; inspections.
- 12-2-3. Departmental purposes.
- 12-2-4. Powers and duties of department.
- 12-2-5. Essential services for inhabitants of coastal islands authorized.
- 12-2-6. Authority to arrange for and accept federal aid and cooperation; volunteer services; cooperation with other government entities and civic organizations.
- 12-2-7. Duty to advise Governor on environmental matters.
- 12-2-8. Promulgation of minimum standards and procedures for protection of natural resources, environment, and vital areas of state.
- 12-2-9. Accreditation of commercial analytical laboratories submitting regulatory data.

**Article 2**  
**Board of Natural Resources.**

- 12-2-20. Short title.
- 12-2-21. Composition of Board of Natural Resources; appointment and confirmation of members; terms of members; vacancies.
- 12-2-22. Oath of office; bond.
- 12-2-23. Officers; meetings; quorum; compensation of members; reimbursement of members for expenses.
- 12-2-24. Powers and duties of Board of Natural Resources.

**CHAPTER 4**  
**MINERAL RESOURCES AND CAVES**

**Article 1**  
**General Provisions.**

- 12-4-1. Powers and duties of Environmental Protection Division as to mineral and geological resources.

## **Article 2**

### **Mining and Drilling.**

#### **Part 1**

##### **OIL WELL REWARD.**

- 12-4-20. Amount of reward; eligibility for reward.
- 12-4-21. Manner of distribution of reward.
- 12-4-22. Authorization for Governor to make payments from surplus or contingent funds.

#### **Part 2**

##### **DEEP DRILLING FOR OIL, GAS, AND OTHER MINERALS.**

- 12-4-40. Short title.
- 12-4-41. Legislative findings and declaration of policy.
- 12-4-42. Definitions.
- 12-4-43. Powers of board as to deep drilling.
- 12-4-44. Authority to adopt and promulgate rules and regulations.
- 12-4-45. Powers of board as to establishment of drilling and operation units; applicability of state antitrust laws to private agreements approved by board.
- 12-4-46. Drilling permits.
- 12-4-47. Bonds or undertaking by persons conducting drilling operations.
- 12-4-48. Actions by director to enforce part; civil penalties; effect of Code section on cause of action by royalty owners, lienholders, or other claimants.
- 12-4-49. Applicability of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."
- 12-4-50. Obedience to subpoena required; self-incrimination not a defense; use of evidence in criminal prosecutions.
- 12-4-51. Effect of part on other laws.
- 12-4-52. Effect of part on authority and functions of other state officers and agencies.
- 12-4-53. Prohibited acts.

#### **Part 3**

##### **SURFACE MINING.**

- 12-4-70. Short title.
- 12-4-71. Legislative purpose; duty of Environmental Protection Division to administer part.
- 12-4-72. Definitions.
- 12-4-73. Powers and duties of division as to surface mining generally; division may decline to assert jurisdiction.
- 12-4-74. Promulgation of rules and regulations by Board of Natural Resources.
- 12-4-75. Permits for surface mining operations; submission of mining land use plan and amendment to plan; bonding of applicants.
- 12-4-76. Substitution of mined areas.
- 12-4-77. Renewal or replacement of revoked permit; mining on unauthorized site.
- 12-4-78. Appeal to superior court.
- 12-4-79. Injunctive relief.
- 12-4-80. Removal of minerals, ores, and other solid matter as prima-facie evidence of surface mining.
- 12-4-81. Judgment pursuant to order.
- 12-4-82. Applicability of part.
- 12-4-83. Civil penalty; procedure for imposing penalties; hearing; judicial review; disposition of recovered penalties.
- 12-4-84. Criminal penalty.

## **Article 3**

### **Phosphates and Gold.**

#### **Part 1**

#### **PHOSPHATES.**

- 12-4-100. Licenses to dig, mine, and remove phosphate deposits; restrictions on license holders.
- 12-4-101. Annual mining fee; license fee; affidavit and bond.
- 12-4-102. Lapse of license.
- 12-4-103. Penalty.

#### **Part 2**

#### **GOLD.**

- 12-4-120. Duties of purchasers of gold bullion, dust, nuggets, or amalgam.
- 12-4-121. Annual reports by judges of probate court.
- 12-4-122. Penalty.

## **Article 4**

### **Cave Protection.**

- 12-4-140. Short title.
- 12-4-141. Legislative purpose.
- 12-4-142. Definitions.
- 12-4-143. Defacing or disturbing natural condition of cave; breaking or tampering with gates, doors, or other device controlling or preventing access to caves; trespass.
- 12-4-144. Sale or offer to sell speleothems.
- 12-4-145. Storing hazardous or detrimental chemicals or materials in caves or sinkholes; dumping or disposing of garbage, dead animals, or similar materials in caves or sinkholes.
- 12-4-146. Killing, harming, removing, or disturbing wildlife found in a cave.
- 12-4-147. Liability of owners of caves for injuries.

## **CHAPTER 5**

### **WATER RESOURCES**

#### **Article 1**

#### **General Provisions.**

- 12-5-1. Water Resources Center - Establishment and operation by Georgia Institute of Technology; purposes.
- 12-5-2. Water Resources Center - Receipt of funds and grants.
- 12-5-3. Water Resources Center - Power to enter into contracts, agreements, and participation arrangements.
- 12-5-4. Rules and regulations relating to water conservation plans; task force to assist in writing.
- 12-5-5. Local water authorities allowed to establish program for voluntary contributions to conservation and environmental projects.
- 12-5-6. Installation and definition of "rain sensor shut-off switch"; penalty for violations.

#### **Article 2**

#### **Control of Water Pollution and Surface-Water Use.**

- 12-5-20. Short title.
- 12-5-21. Declaration of policy; legislative intent.
- 12-5-22. Definitions.
- 12-5-23. Powers and duties of board and director as to control of water pollution and surface-water use generally.
  - 12-5-23.1. Water quality standards for lakes; monitoring; studies and reports; development, approval, and publication of water quality standards.
  - 12-5-23.2. Waste-water discharge limitations; schedule of construction milestones; penalties.

12-5-23.3. Notice; privatization; oversight committee; penalties.

12-5-24. Power of director to enter into contracts and compacts regarding surface-water management.

12-5-25. Investigations by division; institution of proceedings by division.

12-5-26. Entry on premises to investigate and inspect conditions and operating records; protection of trade secrets and confidential information.

12-5-27. Authority to require owner or operator of facility to cooperate with division.

12-5-27.1. Sale or use of cleaning agents containing phosphorus.

12-5-28. Annual reports by division.

12-5-29. Sewage and waste disposal; withdrawal, diversion, or impoundment of surface waters; certificates required for vessels with marine toilets; conditions for transfer of surface water from one river basin to another.

12-5-29.1. Combined sewer overflow; plans for elimination or treatment of sewage overflow; penalties.

12-5-30. Permits for construction, modification, or operation of facilities which discharge pollutants into waters; permits for discharge of dredged or fill material into waters and wetlands; participation in National Pollution Discharge Elimination System.

12-5-30.1. Major spills by publicly owned treatment works.

12-5-30.2. Combined sewer overflow systems.

12-5-30.3. Sludge land application systems.

12-5-31. Permits for withdrawal, diversion, or impoundment of surface waters; monitoring, recording, and reporting water withdrawals.

12-5-32. Aid to pollution control and surface-water management - Powers of division with respect to federal acts; receipt and expenditure of federal and state appropriations.

12-5-33. Aid to pollution control and surface-water management - Grants to counties, municipalities, or other public authority for water pollution control projects.

12-5-34. Aid to pollution control and surface-water management - Amount of state grant.

12-5-35. Aid to pollution control and surface-water management - Administration of grants by division.

12-5-36. Aid to pollution control and surface-water management - Consistency with federal acts.

12-5-37. Aid to pollution control and surface-water management - Intent of article with regard to state contributions.

12-5-38. Aid to pollution control and surface-water management - Management by division of federal construction grants program.

12-5-38.1. Administration of funds; water pollution control and drinking water revolving funds.

12-5-39. Aid to pollution control and surface-water management - Area-wide waste treatment management.

12-5-40. Aid to pollution control and surface-water management - Adoption of rules and regulations regarding application for state grants.

12-5-41. Aid to pollution control and surface-water management - Water and sewage treatment facilities or systems for eligible planned communities.

12-5-42. Cooperative efforts for abatement of pollution; order by director; request for hearing; allowance of reasonable time for abatement.

12-5-43. Administrative hearings.

12-5-44. Judicial review.

12-5-45. Judgment in accordance with division's order.

12-5-46. Effect of article on rights of action.

12-5-47. Emergency orders; hearing.

12-5-48. Injunctive relief.

12-5-49. Representation of division and its agents by Attorney General and his staff.

12-5-50. Intent of article as to conflicts with federal laws and as to eligibility of division or departments of state government for federal funds; remedial action.

12-5-51. Civil liability.

12-5-52. Civil penalty.

12-5-53. Criminal penalty.

**Article 3**  
**Wells and Drinking Water.**

**Part 1**  
**GENERAL PROVISIONS.**

- 12-5-70. Prospecting for underground water supplies - Powers of department.
- 12-5-71. Prospecting for underground water supplies - Records of findings; acceptance of federal grants.
- 12-5-72. Prospecting for underground water supplies - Contracts with counties or municipalities for use of water.
- 12-5-73. Prospecting for underground water supplies - Appropriation or allocation of funds to department.

**Part 2**  
**GROUND-WATER USE GENERALLY.**

- 12-5-90. Short title.
- 12-5-91. Declaration of policy.
- 12-5-92. Definitions.
- 12-5-93. Power of director to employ personnel.
- 12-5-94. Adoption of rules and regulations by Board of Natural Resources.
- 12-5-95. Proposed regulations regarding ground-water use; hearings; adoption and modification of regulations; contesting validity of regulations.
- 12-5-96. Permits to withdraw, obtain, or use ground water; water conservation plan; factors to be considered; notice of official acts; administrative hearings; judicial review.
- 12-5-97. Duration of permits; renewal; transfer; certified statements by holders; monitoring water use; granting permit to person withdrawing ground water prior to July 1, 1973; prior investments in land and nature of plans for water use; continued withdrawal pending decision on permit.
- 12-5-98. Investigations; entry; protection of confidential information or trade secrets; refusing entry or access to and interference with authorized representatives of division.
- 12-5-99. Order by director after failure of conference, conciliation, or persuasion; hearings; appeal.
- 12-5-100. Judgment in accordance with director's order.
- 12-5-101. Injunctive relief.
- 12-5-102. Emergency orders; hearing; appeal.
- 12-5-103. Representation of department by Attorney General.
- 12-5-104. Effect of part on other laws.
- 12-5-105. Permits for farm uses; notice of transfer or modification in use or capacity; nonuse; suspension or modification; priority uses; reporting and measuring water withdrawals; no effect on existing common or statutory law.
- 12-5-106. Civil penalties; procedure for imposing penalties; hearing; judicial review.
- 12-5-107. Criminal penalty.

**Part 3**  
**WATER WELL STANDARDS.**

- 12-5-120. Short title.
- 12-5-121. Legislative intent.
- 12-5-122. Definitions.
- 12-5-123. Creation of council; membership; chairperson; meetings; majority vote; quorum; director as secretary; self-governance; reimbursement for expenses; Attorney General to provide legal services.
- 12-5-124. Powers and duties of council generally.
- 12-5-125. License requirement; drilling under direction of professional geologist or engineer.
- 12-5-126. Director as administrative agent; administrative duties of division; orders, notices, and processes.
- 12-5-127. Licensing of water well contractors generally; applications for trainee licenses; violation of Code section.
- 12-5-128. Contents of license; display.



12-5-129. Suspension and revocation of licenses; hearings; reissuance of revoked licenses; injunction; cessation of well operation; seizure of equipment.  
12-5-130. Expiration and renewal of licenses; replacement of lost, destroyed, or mutilated licenses.  
12-5-131. Notifying contractors of changes in rules and regulations.  
12-5-131.1. Licensing requirements for drilling well on own property; water well contractors completing electrical or plumbing work incidental to drilling and construction of well.  
12-5-132. Effect of part.  
12-5-133. Penalty; confiscation of equipment; evidence of violation of part.  
12-5-133.1. Civil penalties; hearing.  
12-5-134. Standards for wells and boreholes.  
12-5-135. Requirement of bond or letter of credit.  
12-5-136. Compliance with standards and licensing requirements; inspections; action by director if well not up to standard.  
12-5-137. Procedure for confiscation and sale of contraband equipment; defenses.  
12-5-138. Council authorized to establish rules and regulations for pump installation; certification requirements; civil penalties for violations.

#### **Part 4**

#### **ARTESIAN WELLS.**

12-5-150. Conditions under which artesian wells must be tapped.  
12-5-151. Wells on government property.  
12-5-152. Applicability of part.  
12-5-153. Penalty.

#### **Part 5**

#### **PUBLIC WATER SYSTEMS.**

12-5-170. Short title.  
12-5-171. Declaration of policy; legislative intent; Environmental Protection Division to administer part.  
12-5-172. Definitions.  
12-5-173. Designation of division as state agency to receive financial aid from federal government and other sources.  
12-5-174. Powers and duties of Board of Natural Resources as to public water systems.  
12-5-175. Fluoridation of public water systems; state funds for cost of fluoridation equipment, chemicals, and materials; tax deduction for fluoride-removing devices.  
12-5-176. Powers and duties of director as to public water systems generally.  
12-5-177. Enforcement of rules and regulations; minimum requirements for and applicability of Georgia primary drinking water regulations; records and reports.  
12-5-178. Variances and exemptions.  
12-5-179. Permits for operation of public water systems; performance bonds.  
12-5-180. Duty of permit applicants and holders to supply information as required by director.  
12-5-180.1. Allocating water and waste-water usage among tenants; charging tenants for usage.  
12-5-181. Inspections and investigations by division.  
12-5-182. Powers of director as to protection of public from contaminants presenting imminent and substantial danger.  
12-5-183. Plan for emergency provision of water.  
12-5-184. Notice of violations, variances, and exemptions involving public water systems.  
12-5-185. Order by director after failure of conference, conciliation, or persuasion; hearing on order or permit issued by director.  
12-5-186. Hearings; judicial review.  
12-5-187. Emergency orders; hearing; review.  
12-5-188. Injunctive relief.  
12-5-189. Judgment in accordance with director's order.  
12-5-190. Legal assistance by Attorney General.  
12-5-191. Prohibited acts.  
12-5-192. Civil penalties; procedures for imposing penalty; hearing; review.  
12-5-193. Criminal penalty.

**Article 4**  
**Coastal Waters, Beaches, and Sand Dunes.**

**Part 1**  
**GENERAL PROVISIONS.**

12-5-210. Development and utilization of coastal and offshore waters, lands, and resources; delegation of powers and duties; power to make contracts.

12-5-211. Receipt of financial and other assistance; plans and proposals for development and utilization of coastal and offshore resources; coordination between state agencies; reporting.

12-5-212. Annual report.

12-5-213. Liberal construction of part.

**Part 2**  
**SHORE PROTECTION.**

12-5-230. Short title.

12-5-231. Legislative findings and declarations.

12-5-232. Definitions.

12-5-233. Area of operation of part.

12-5-234. Powers and duties of department.

12-5-235. Shore Protection Committee.

12-5-236. Rules and regulations.

12-5-237. Permit required; exceptions.

12-5-238. Form and contents of application for permit.

12-5-239. Completion of permit; notice of proposed activity; requirements and restrictions regarding issuance of permit.

12-5-240. Posting of permit.

12-5-241. Local shore assistance programs.

12-5-242. Technical assistance to local governments; model ordinance.

12-5-243. Local governments not prohibited from adopting more restrictive ordinances.

12-5-244. Administrative and judicial review.

12-5-245. Injunctive relief.

12-5-246. Jurisdiction of superior court.

12-5-247. Enforcement of part; civil penalty.

12-5-248. Criminal violations.

**Part 3**  
**PRESERVATION AND MANAGEMENT OF COASTAL ZONE.**

12-5-260 through 12-5-267 [Repealed].

**Part 4**  
**COASTAL MARSHLANDS.**

12-5-280. Short title.

12-5-281. Legislative findings and declarations.

12-5-282. Definitions.

12-5-283. Coastal Marshlands Protection Committee created; members; powers; per diem and expenses; administrative hearings and review; permits for minor alterations.

12-5-284. Authority of department as to coastal marshlands generally.

12-5-285. Power of board to promulgate rules and regulations.

12-5-286. Permit required; application; notice; public hearing; issuance; denial; dynamic dune fields.

12-5-287. Leasing of state owned marshland or water bottoms.

12-5-288. Restriction on granting of permits; size restriction; activities and structures considered contrary to public interest.

12-5-289. Inspection of marshlands.

12-5-290. Jurisdiction to restrain violation of part.

12-5-291. Enforcement of part.

- 12-5-292. Posting of permit.
- 12-5-293. Effect on permit of sale, lease, or other conveyance of land.
- 12-5-294. Existence of an emergency; order; right to hearing.
- 12-5-295. Applicability of part.
- 12-5-296. Criminal violation.
- 12-5-297. Liability for damages.

**Part 5**  
**SEA OATS.**

- 12-5-310. Legislative purpose.
- 12-5-311. Cutting, harvesting, removing, or eradicating sea oats.
- 12-5-312. Penalty.

**Part 6**  
**COASTAL MANAGEMENT.**

- 12-5-320. Short title.
- 12-5-321. Legislative findings.
- 12-5-322. Definitions.
- 12-5-323. Powers and duties of department.
- 12-5-324. Power of board to promulgate rules and regulations.
- 12-5-325. Additional duties of department.
- 12-5-326. Duties of other state agencies in relation to this part.
- 12-5-327. Duty of department to prepare document for submission to Governor; duty to prepare report every three years.
- 12-5-328. Nothing in part to be construed as waiver of federal immunity or consent for other state to exercise jurisdiction.
- 12-5-329. Repeal of part on July 1, 2009.

**Article 5**  
**Rivers and River Basins.**

**Part 1**  
**GENERAL PROVISIONS.**

- 12-5-330. Resources Advisory Board, Southeast River Basins [Repealed].
- 12-5-331. Duties and powers of department as to development of state's rivers.

**Part 2**  
**GEORGIA SCENIC RIVER SYSTEM.**

- 12-5-350. Short title.
- 12-5-351. Definitions.
- 12-5-352. Rivers comprising the Georgia Scenic River System.
- 12-5-353. Duties of department as to scenic rivers.
- 12-5-354. Construction, operation, or maintenance of dams, reservoirs, or other structures on scenic rivers; acquisition of land within boundaries of scenic rivers.

**Part 3**  
**DAM SAFETY.**

- 12-5-370. Short title.
- 12-5-371. Declaration of purpose.
- 12-5-372. Definitions.
- 12-5-373. Powers and duties of director generally.
- 12-5-374. Powers and duties of board as to dams and artificial barriers.
- 12-5-375. Inventory and classification of dams; investigations; technical assistance to local government; artificial barriers; notice requirements.
- 12-5-376. Permits to construct and operate dams.

12-5-376.1. Subclassification of category I dams by director; minimum spillway design requirements.

12-5-377. Dam removal.

12-5-378. Inspection of dams and other barriers; administrative orders to enforce compliance; emergency action by director.

12-5-379. Investigations; right of access by division; right to require statements and reports regarding construction and operation of dams; refusal of access or interference.

12-5-380. Administrative and judicial review.

12-5-380.1. Orders of director or administrative law judge filed in superior court; effect of filing.

12-5-381. Injunctive relief.

12-5-382. Power of commissioner of transportation as to contracts relating to part.

12-5-383. Liability for damages.

12-5-384. Conformance to and compliance with part required.

12-5-385. Criminal and civil penalties.

#### **Part 4**

#### **DEVELOPMENT OF CHATTAHOOCHEE RIVER BASIN.**

12-5-400. Short title.

12-5-401. Purpose.

12-5-402. Powers and duties of department.

#### **Part 5**

#### **DEVELOPMENT OF ALTAMAHA RIVER BASIN.**

12-5-420. Short title.

12-5-421. Purpose.

12-5-422. Powers and duties of department.

#### **Part 6**

#### **PROTECTION OF METROPOLITAN RIVERS.**

12-5-440. Short title.

12-5-441. Definitions.

12-5-442. Legislative findings and purposes.

12-5-443. Comprehensive land and water use plan; transmittal of plan to political subdivisions; notice and hearing; promulgation of rules and regulations; application fee.

12-5-444. Prohibited land and water uses; uses prior to adoption of plan; certificate of compliance with plan; information required of applicant; changes in use; notice and hearing.

12-5-445. Review of application and supporting documents by center; effect of inconsistencies; alternatives where modification recommended.

12-5-446. Prereview by commission of application for certificate; fee where prereview requested by applicant; effectiveness of certificate following prereview; immediate effectiveness of certificate; consultation by commission with governing authority; informal consultation with applicants [Repealed].

12-5-447. Minimum standards for certificates and recommendations.

12-5-448. Appeal.

12-5-449. Other laws not superseded by part.

12-5-450. Election by counties contiguous to area, and by municipalities within county, to come under part [Repealed].

12-5-451. Uses to which part inapplicable.

12-5-452. Cease and desist orders; injunctions; land-disturbing activities as nuisances; penalty; jurisdiction of actions.

12-5-453. Local regulation of land in drainage basins; enforcement where local regulation inadequate; failure of governing authority to meet requirements.

12-5-454. Removal of sand from watercourse.

12-5-455. Plan and application for certificate open to public inspection.

12-5-456. Center to notify local authorities of violations of this part; director's powers in absence of local action; hearings on violations.

12-5-457. Environmental Protection Division's powers and duties unaffected by part.

## **Article 6**

### **Water Supply.**

12-5-470. Short title.

12-5-471. Definitions.

12-5-472. Acquisition, construction, and maintenance of projects authorized; standards and procedures; agreement with local government having affected property.

12-5-473. Powers of department generally.

12-5-474. Rentals, fees, and other charges; retention of miscellaneous funds; terms and conditions for use of project.

12-5-475. Rules and regulations.

12-5-476. Contracts with local governments for planning, construction, management, and maintenance.

12-5-477. Supplemental nature of provisions.

12-5-478. Liberal construction.

12-5-479. Contracts with public entities for services or use of facilities or equipment; Project Water Users Advisory Council and Project Site Control Advisory Council; user agreement for provision of environmental services.

12-5-480. Use of services of Georgia State Financing and Investment Commission.

12-5-481. Legislative findings.

12-5-482. Failure of local government to collect and remit all amounts due to department and others; notice; withholding of state funds.

## **Article 7**

### **Costs of Oil Spill Response.**

12-5-500. Definitions.

12-5-501. Liability for removal costs or damages; exceptions.

## **Article 8**

### **Comprehensive State-wide Water Management Planning.**

12-5-520. Short title.

12-5-521. Definitions.

12-5-522. Policy statement for comprehensive state-wide water management plan; guiding principles; requirements of plan.

12-5-523. Cooperation with Water Council; involvement of stakeholders; initial draft plan.

12-5-524. Water Council created; obligations of council.

12-5-525. Approval by General Assembly; alternative to passage by legislature; emergency actions by Water Council in event of imminent peril; review and revision of plan.

## **Article 9**

### **Flint River Drought Protection.**

12-5-540. Short title.

12-5-541. Legislative intent.

12-5-542. Definitions.

12-5-543. Establishment of drought abatement program; rules and regulations.

12-5-544. Powers of director.

12-5-545. Administration of fund.

12-5-546. Prediction of drought; irrigation reduction auction; agreement.

12-5-547. Director's orders.

12-5-548. Investigations and inspections.

12-5-549. Compliance; violations.

12-5-550. Repayment penalty; notice of violation; time limit to respond to notice of violation; failure to respond to notice of violation.

## **Article 10**

### **Metropolitan North Georgia Water Planning District.**

- 12-5-570. Short title.
- 12-5-571. Legislative intent.
- 12-5-572. Creation; purpose.
- 12-5-573. Definitions.
- 12-5-574. Powers; approval of plan non-binding on finances; extension of time for preparing plan.
- 12-5-575. Board created; appointments; vacancies; terms.
- 12-5-576. Open meetings; quorum; voting; executive sessions.
- 12-5-577. Operating budget; sources of funding; power to enter into contracts and to expend funds; depositing.
- 12-5-578. Adjoining counties or municipalities application to be added to the district area.
- 12-5-579. Staffing; cooperation among agencies.
- 12-5-580. Coordinating committees; finance committees.
- 12-5-581. Advisory councils.
- 12-5-582. Model ordinances for effective storm-water management and for a district-wide watershed management plan; annual review; public meetings; certification by director; local compliance.
- 12-5-583. Short-term and long-term plans for waste-water management plan; annual review; public meetings; certification by director.
- 12-5-584. Water supply and water conservation management plan.
- 12-5-585. Education and public awareness.
- 12-5-586. Annual report detailing activities and progress.

## **CHAPTER 6**

### **FOREST RESOURCES AND OTHER PLANT LIFE**

#### **Article 1**

##### **Forest Resources.**

#### **Part 1**

##### **STATE FORESTRY COMMISSION.**

- 12-6-1. Definitions.
- 12-6-2. Creation of State Forestry Commission; members; terms of office; ineligibility of Governor for membership; vacancies; effect of appointment when Senate not in session.
- 12-6-3. Chairman; reimbursement of members for expenses; meetings.
- 12-6-4. Dismissal of members for failure to attend meetings.
- 12-6-5. Powers and duties of commission generally; volunteer services.
- 12-6-5.1. Legislative findings; reforestation incentives program authorized; powers of commission.
- 12-6-6. Management, conservation, and protection of forest lands; sale of forest products from land managed by commission; production and sale of seedlings.
- 12-6-7. Federal financial aid - Participation in rural fire prevention and control program; contributions by counties and fire departments.
- 12-6-8. Federal financial aid - Expenditure of funds for forest farming and marketing of forest products.
- 12-6-9. Acquisition of land; gifts of land for use as lookout tower sites; abandoned tower sites; improvements on land subject to reversionary clause.
- 12-6-10. Reports to General Assembly.
- 12-6-11. Director - Appointment; qualifications; salary; reimbursement for expenses; term.
- 12-6-12. Director - Duty of director to devote full time to office; power and duty of director to act for commission when commission not in session.
- 12-6-13. Director - Oath; bond; location of office.
- 12-6-14. Director - Eligibility of commission members for directorship or for employment under commission or director.
- 12-6-15. Director - Adoption of rules, regulations, and methods of administration.
- 12-6-16. Director - Control of tree diseases and insect infestation.
- 12-6-17. Director - Regulation of controlled burning where drought or other conditions exist.

12-6-18. Director - Expenditure of funds for benefit of lands under commission's control; sale and disposal of products from controlled lands.

12-6-19. Director - Promulgation of rules and regulations as to lands under commission's control; sale, lease, or exchange of controlled lands.

12-6-20. Forestry investigators.

12-6-21. Uncontrolled fire as constituting a public nuisance; duties and liabilities of person or entity responsible.

12-6-22. Investigation of tree diseases or insect infestation; notification of landowner; recommendations; effect of landowner's failure to act; disposition of proceeds derived from sale of trees.

## **Part 1A**

### **WOOD REMOVAL REQUIREMENTS.**

12-6-23. Wood load ticket required for wood removal; form; exceptions.

12-6-24. Providing notice.

## **Part 2**

### **PRACTICE OF PROFESSIONAL FORESTRY.**

12-6-40. Legislative purpose.

12-6-41. Definitions.

12-6-42. State Board of Registration for Foresters - Creation; appointment of members; certificate of appointment; oath; term of office.

12-6-43. State Board of Registration for Foresters - Qualifications of members.

12-6-44. State Board of Registration for Foresters - Compensation of members.

12-6-45. State Board of Registration for Foresters - Removal of members; vacancies.

12-6-46. State Board of Registration for Foresters - Meetings; officers.

12-6-47. State Board of Registration for Foresters - Rules and regulations; seal.

12-6-48. State Board of Registration for Foresters - Record of proceedings.

12-6-49. Qualifications and requirements for registered foresters.

12-6-49.1. Denial or suspension of license for noncompliance with child support order.

12-6-49.2. Suspension of registered forester license; borrowers in default; hearing and appeal procedures.

12-6-50. Applications for registration; fee.

12-6-51. Examinations.

12-6-52. Licenses - Issuance generally; endorsement by registrant of plans, maps, specifications, and reports issued by registrant.

12-6-53. Licenses - Eligibility of foresters with 12 years' experience [Repealed].

12-6-54. Licenses - Reciprocity for nonresidents.

12-6-55. Licenses - Only individuals may be licensed.

12-6-56. Licenses - Expiration and renewal generally; continuing forestry education requirement.

12-6-57. State Board of Registration for Foresters - Denial or revocation of license; discipline of licensee; code of ethics.

12-6-58. State Board of Registration for Foresters - Duplicate license for lost, destroyed, or mutilated license.

12-6-59. Receipts and disbursements [Repealed].

12-6-60. Injunctive relief.

12-6-61. Prohibited acts.

12-6-62. Penalty; authority to prefer charges; immunity of person bringing charges from liability; duty to enforce part; legal assistance by Attorney General.

12-6-63. Termination [Repealed].

## **Part 3**

### **FOREST FIRE PREVENTION AND CONTROL.**

12-6-80. Short title.

12-6-81. Legislative purpose.

12-6-82. Definitions.

12-6-83. Direction and supervision by State Forestry Commission of forest fire protection work; making and enforcing rules and regulations.  
12-6-84. Entry upon land for fire-prevention purposes or investigations.  
12-6-85. Fire protection units.  
12-6-86. Unit forestry boards - Creation; appointment; qualifications; terms of office; vacancies; service by members without compensation.  
12-6-87. Unit forestry boards - Duties.  
12-6-88. Unit forestry boards - Annual forest fire protection plans appropriation of funds for public information campaign.  
12-6-89. "Extreme forest fire emergency" defined; authority of Governor, forestry investigators, and peace officers in emergency; advice by director to Governor as to existence of emergency.  
12-6-90. Permit required for burning woods, lands, marshes, or other flammable vegetation; exceptions.  
12-6-91. Controlled burning by owners over own forest land.  
12-6-92. Vesting of title to property in State Forestry Commission.  
12-6-93. Appropriations; agreements between State Forestry Commission and counties; taxation by counties for fire protection.

#### **Part 4**

##### **FORESTRY RESEARCH.**

12-6-110. Powers and duties of State Forestry Commission as to forestry research.  
12-6-111. Employment by State Forestry Commission of assistants and other employees.  
12-6-112. Appropriations, grants, or gifts to State Forestry Commission for forestry research.  
12-6-113 through 12-6-118. [Repealed].

#### **Part 5**

##### **HERTY FOUNDATION.**

12-6-130. Legislative declaration.  
12-6-131. Creation of foundation; corporate powers; creation of board of trustees; terms of trustees; purpose of foundation.  
12-6-132. Composition of board of directors.  
12-6-133. Powers of foundation generally.  
12-6-134. Purpose; acceptance of donations, bequests, and appropriations; pulpwood experiments for states making appropriations; duties to citizens of states or subdivisions making appropriations; reports.  
12-6-135. Appointment of directors from states making financial contributions to foundation; effect of cessation of contributions.  
12-6-136. Service of process.  
12-6-137. Title to property.  
12-6-138. Support of experimental work.  
12-6-139. Audit of accounts.

#### **Part 6**

##### **PRESCRIBED BURNING.**

12-6-145. Short title.  
12-6-146. Legislative findings and purpose.  
12-6-147. Definitions.  
12-6-148. Requirements for prescribed burning; limitation on liability.  
12-6-149. Fire manager program authorized; record-keeping requirements; public information campaign.

#### **Article 2**

##### **Ginseng Protection.**

12-6-150. Short title.  
12-6-151. Definitions.  
12-6-152. Prohibited acts regarding harvesting ginseng.



- 12-6-153. Reports concerning disposal of ginseng.
- 12-6-154. Registration and reports required of dealers or growers.
- 12-6-155. Determination by department concerning continuing necessity of article; report to General Assembly.
- 12-6-156. Registration forms and reporting forms.
- 12-6-157. Penalty.

### **Article 3**

#### **Wildflower Preservation.**

- 12-6-170. Short title.
- 12-6-171. Definitions.
- 12-6-172. Powers and duties of Department and Board of Natural Resources as to wildflower preservation.
- 12-6-173. Cutting, pulling up, digging, or removing protected species.
- 12-6-174. Sale of protected species.
- 12-6-175. Transporting, carrying, or conveying protected species without tag and written document.
- 12-6-176. Penalty.

### **Article 4**

#### **Harvest and Sale of Pine Straw.**

- 12-6-200. Definitions.
- 12-6-201. Legislative findings.
- 12-6-202. Certificate of harvest.
- 12-6-203. Prohibited acts.
- 12-6-204. Stop sale, stop use, or removal orders to owners or custodians of pine straw.
- 12-6-205. Seizure of pine straw obtained or offered for sale in violation of article.
- 12-6-206. Harvesting or handling pine straw for home or personal use.
- 12-6-207. Penalty.

### **Article 5**

#### **Carbon Sequestration Registry.**

- 12-6-220. (For effective date, see note) Short title.
- 12-6-221. (For effective date, see note) Definitions.
- 12-6-222. (For effective date, see note) Establishment of Carbon Sequestration Registry; uniform automated electronic information system.
- 12-6-223. (For effective date, see note) Purpose of registry.
- 12-6-224. (For effective date, see note) Role of the commission.
- 12-6-225. (For effective date, see note) Procedures and protocols.
- 12-6-226. (For effective date, see note) Procedures and protocols are not condition for ongoing use of forest land.
- 12-6-227. (For effective date, see note) Voluntary participation; right of withdrawal.
- 12-6-228. (For effective date, see note) Reporting of results; basic unit of participation in registry; filing of reports.
- 12-6-229. (For effective date, see note) Adoption of standardized forms.
- 12-6-230. (For effective date, see note) Certification of methodologies and results; approval of competent third-party organizations for certifying results; requirements of organizations; review, evaluation and reporting to Governor.
- 12-6-231. (For effective date, see note) Reporting to Governor by director.
- 12-6-232. (For effective date, see note) Obligation of commission.

### **Article 6**

#### **Forest Heritage Trust Act.**

- 12-6-240. Short title.
- 12-6-241. Legislative findings.
- 12-6-242. Definitions.
- 12-6-243. Role of the commission.

- 12-6-244. Powers and duties of commission.
- 12-6-245. Dedication as forest heritage preserve.
- 12-6-246. Use of forest heritage preserves.
- 12-6-247. Impact of dedication as forest heritage preserve on other protected status.

## **CHAPTER 7**

### **CONTROL OF SOIL EROSION AND SEDIMENTATION**

- 12-7-1. Short title.
- 12-7-2. Legislative findings; policy of state and intent of chapter.
- 12-7-3. Definitions.
- 12-7-4. Adoption of comprehensive ordinances relating to land-disturbing activities; delegation of responsibility to planning and zoning commission; other local ordinances relating to land development; effect of chapter on design professionals.
- 12-7-5. Adoption of rules and regulations for localities without ordinances.
- 12-7-6. Best management practices; minimum requirements for rules, regulations, ordinances, or resolutions.
- 12-7-7. Permit or notice of intent required for land-disturbing activities; approval of application and issuance of permit; denial of permit; bond requirement.
  - 12-7-7.1. Erosion and sediment control plan prepared; completion; implementation.
- 12-7-8. Certification of locality as local issuing authority; periodic review; procedure for revoking certification; enforcement actions.
- 12-7-9. Applications for permits; erosion and sediment control plans and data; time for issuance or denial.
- 12-7-10. Referral of application and plan to district; time for action.
- 12-7-11. Statement of reasons for denial of permit required; conditions for approval; suspension, revocation, or modification of permit.
- 12-7-12. Orders directed to violators; stop work order procedures.
- 12-7-13. Injunctions.
- 12-7-14. Actions to restrain imminent danger; emergency orders; duration of effectiveness of orders.
- 12-7-15. Civil penalty.
- 12-7-16. Hearings and review.
- 12-7-17. Exemptions.
- 12-7-18. Effect of chapter on requirements of the "Georgia Water Quality Control Act."
- 12-7-19. Education and training requirements; required programs; instructor qualifications; expiration of certification.
- 12-7-20. Creation of Stakeholder Advisory Board; responsibilities; procedures.
- 12-7-21. (Repealed effective July 1, 2006) Appointment of panel to study controls implemented pursuant to chapter; procedure and operation of panel.
- 12-7-22. Electronic filing and reporting system.

## **CHAPTER 8**

### **WASTE MANAGEMENT**

#### **Article 1**

#### **General Provisions.**

- 12-8-1. Notice of denial of individual sewage disposal permits; duty to consider denial in ad valorem tax determinations.
- 12-8-2. Dumping sanitary sewer, kitchen, or toilet wastes in storm or sanitary sewers prohibited; forfeiture of involved vehicles.

## **Article 2**

### **Solid Waste Management.**

#### **Part 1**

#### **GENERAL PROVISIONS.**

- 12-8-20. Short title.
- 12-8-21. Declaration of policy; legislative intent.
- 12-8-22. Definitions.
- 12-8-23. Powers and duties of board.
- 12-8-23.1. Powers and duties of director.
- 12-8-24. Permits for solid waste or special solid waste handling, disposal, or thermal treatment technology facility; inspection of solid waste generators.
- 12-8-24.1. Certification of municipal solid waste disposal facility operators.
- 12-8-24.2. Public hearing prior to entering contract regarding landfill.
- 12-8-25. Sites in certain counties within one-half mile of adjoining county.
- 12-8-25.1. Sites within 5,708 yards of national historic site.
- 12-8-25.2. Sites within two miles of significant ground-water recharge area.
- 12-8-25.3. Further restrictions on sites within significant ground-water recharge area or near military air space used as bombing range.
- 12-8-25.4. Limits on the number of solid waste facilities within given area.
- 12-8-25.5. Locating disposal facility near private recreational camp.
- 12-8-26. Public meetings on site selection; notice; decision.
- 12-8-27. Standards for handling special solid waste; transportation manifest; fees; inspection; prohibition of waste generated out-of-state; certification [Repealed].
- 12-8-27.1. Solid waste trust fund.
- 12-8-27.2. Financial responsibility.
- 12-8-28. Lead acid vehicle batteries.
- 12-8-29. Investigations by director; actions to enforce article.
- 12-8-29.1. Authority to enter property for inspection and investigation.
- 12-8-29.2. Confidentiality of information obtained by director or agents.
- 12-8-30. Director's order for corrective action.
- 12-8-30.1. Emergency orders.
- 12-8-30.2. Hearings and review of actions and orders.
- 12-8-30.3. Judgment in accordance with director's order.
- 12-8-30.4. Injunctive relief.
- 12-8-30.5. Attorney General's duties.
- 12-8-30.6. Civil penalties for violations; procedures.
- 12-8-30.7. Unlawful acts.
- 12-8-30.8. Penalties for violations.
- 12-8-30.9. Powers of local governmental bodies and state not limited by this part.
- 12-8-30.10. Exemption for private individuals.
- 12-8-31. State solid waste management plan.
- 12-8-31.1. Local, multijurisdictional, or regional solid waste plans.
- 12-8-32. Permits for regional solid waste disposal facilities.
- 12-8-33. Recycling Market Development Council.
- 12-8-33.1. Improper disposal of computer equipment; Computer Equipment Disposal and Recycling Council created; compensation; powers and duties.
- 12-8-34. Labeling rigid plastic containers or bottles.
- 12-8-35. Review of purchases and purchasing specifications, practices, and procedures by commissioner of administrative services.
- 12-8-36. State agency recycling and collection programs.
- 12-8-37. Financial aid from federal government or other sources.
- 12-8-37.1. State grants authorized.
- 12-8-38. Funds generated by division; use for operation and maintenance; deposit of unexpended funds.
- 12-8-39. Cost reimbursement fees; surcharges.
- 12-8-39.1. Program for reduction of municipal solid waste on per capita basis.
- 12-8-39.2. Reports of costs of solid waste management services.
- 12-8-39.3. Authorization to enforce collection of taxes, fees, or assessments.

- 12-8-40. Exemption for livestock-feeding facility.
- 12-8-40.1. Tire disposal restrictions.
- 12-8-40.2. Yard trimmings disposal restrictions.
- 12-8-40.3. Disposal of shingles containing asphalt.
- 12-8-41. Department to provide permits.

## **Part 2**

### **REGIONAL SOLID WASTE MANAGEMENT AUTHORITIES.**

- 12-8-50. Short title.
- 12-8-51. Authority for enactment; nonprofit and public purposes of authorities; tax exemption; state policy; unfair competition with private sector prohibited.
- 12-8-52. Definitions.
- 12-8-53. Creation of authorities.
- 12-8-54. Board of directors.
- 12-8-55. Quorum; majority vote requirement.
- 12-8-56. Powers of authority.
- 12-8-57. Limitation on liability of members, officers, or employees of authority.
- 12-8-58. Bonds or other obligations; limitations and procedures for issuance.
- 12-8-59. Bonds or other obligations not indebtedness of state or political subdivision.
- 12-8-59.1. Liberal construction of part; bonds not subject to other state law; other authorities.
- 12-8-59.2. Resolutions or ordinances declaring functioning of previously activated authority unnecessary.

## **Article 3**

### **Hazardous Waste.**

## **Part 1**

### **HAZARDOUS WASTE MANAGEMENT.**

- 12-8-60. Short title.
- 12-8-61. Legislative policy.
- 12-8-62. Definitions.
- 12-8-63. Administration of article by division; enforcement of article by director.
- 12-8-64. Powers and duties of board as to hazardous waste.
- 12-8-65. Powers and duties of director as to hazardous waste.
- 12-8-65.1. Hazardous waste reduction plans; specific performance goals; biennial progress reports; rules and regulations.
- 12-8-65.2. Updating plans and reports; technical assistance; information available to public.
- 12-8-65.3. Plans and reports by out-of-state generators storing, treating, or disposing of hazardous waste in state.
- 12-8-65.4. Duplication of prior reporting requirements not required.
- 12-8-66. Permits for construction, installation, operation, or alteration of hazardous waste facilities.
- 12-8-67. Hazardous waste in transit to be accompanied by manifest.
- 12-8-68. Requirement of financial responsibility for persons operating or maintaining hazardous waste storage, treatment, or disposal facility; hazardous waste facility trust fund.
- 12-8-69. Variances.
- 12-8-70. Inspections and investigations.
- 12-8-71. Proceedings for enforcement.
- 12-8-72. Application for injunctive relief.
- 12-8-73. Hearings on contested matters; judicial review.
- 12-8-74. Judgment in accordance with final orders.
- 12-8-75. Powers of director in situations involving imminent and substantial endangerment to environment or to public health.
- 12-8-76. Legal assistance by Attorney General.
- 12-8-77. Contracts to provide solid waste handling, reclamation, or recycling services.
- 12-8-78. Public access to information; protection of confidential information; access to confidential information by federal government and courts.
- 12-8-79. Effect of other laws on permits issued under article and rules and regulations.
- 12-8-80. Applicability of article [Repealed].

12-8-81. Civil penalties; procedures for imposing penalties.  
12-8-82. Criminal penalty.  
12-8-83. Use of material mixed with dioxin or other hazardous waste for dust suppression or road treatment prohibited.

## **Part 2**

### **HAZARDOUS SITE RESPONSE.**

12-8-90. Short title.  
12-8-91. Declaration of policy and legislative intent.  
12-8-92. Definitions.  
12-8-93. Powers and duties of board.  
12-8-94. (For effective date, see note) Powers and duties of director.  
12-8-95. Hazardous waste trust fund.  
12-8-95.1. Hazardous waste management fees and hazardous substance reporting fees.  
12-8-96. Corrective action upon release of hazardous wastes, hazardous constituents, or hazardous substances; notice; administrative consent order; expenditure of funds from trust fund.  
12-8-96.1. Liability for cleanup costs; punitive damages; action for recovery of costs and damages; claims for contribution.  
12-8-96.2. Limitation of liability of corrective action contractors.  
12-8-96.3. Limitation of liability for release of hazardous substances for subsequent purchasers of property.  
12-8-97. Hazardous site inventory.

## **Article 4**

### **Georgia Hazardous Waste Management Authority [Repealed].**

12-8-100 through 12-8-113. [Repealed].

## **Article 5**

### **Southeast Interstate Low-Level Radioactive Waste Management Compact.**

12-8-120. Short title.  
12-8-121. Compact enacted and entered into by State of Georgia.  
12-8-122. Text of compact.  
12-8-123. Appointment of members of Southeast Interstate Low-Level Radioactive Waste Management Commission and their alternates.

## **Article 6**

### **Mitigating Effect of Hazardous Materials Discharge.**

12-8-140. Definitions.  
12-8-141. Immunity for persons providing assistance or advice.  
12-8-142. Report of persons providing assistance.

## **Article 7**

### **Product Packaging.**

12-8-160. Legislative findings and declarations.  
12-8-161. Definitions.  
12-8-162. Prohibition against sale of packages containing lead, cadmium, mercury, or hexavalent chromium; allowable concentration levels.  
12-8-163. Exempt packaging.  
12-8-164. Certificates of compliance.  
12-8-165. Rules and regulations.  
12-8-166. Violation of article.

## **Article 8**

### **Pollution Prevention Assistance Division.**

- 12-8-180. Definitions.
- 12-8-181. Establishment of division; appointment of director; voluntary activities of businesses and industries.
- 12-8-182. Administrative responsibility of division; duty of division director; rules and regulations of board.
- 12-8-183. Pollution prevention assistance plan.
- 12-8-184. Confidentiality of information provided by business or industry; ownership of reports and plans.
- 12-8-185. Duty of division to advise on rules and regulations governing toxic substances.
- 12-8-186. Biennial report of division.
- 12-8-187. Preparation by division of biennial report of hazardous waste generators and capacity assurance plan.
- 12-8-188. Biennial needs assessment report on hazardous waste management facility.
- 12-8-189. Transfer of personnel and facilities of Georgia Hazardous Waste Management Authority and other state programs to division.

## **Article 9**

### **Georgia Hazardous Site Reuse and Redevelopment.**

- 12-8-200. Short title.
- 12-8-201. Public policy.
- 12-8-202. Definitions.
- 12-8-203. Rules and regulations.
- 12-8-204. Powers and duties of director.
- 12-8-205. Criteria for property to qualify for limitation of liability.
- 12-8-206. Criteria for prospective purchasers to qualify for limitation of liability.
- 12-8-207. Limitation of expenses following approval of a corrective action plan.
- 12-8-208. Exceptions to limitation of liability.
- 12-8-209. Initial compliance status report.

## **CHAPTER 9**

### **PREVENTION AND CONTROL OF AIR POLLUTION**

## **Article 1**

### **Air Quality.**

- 12-9-1. Short title.
- 12-9-2. Declaration of public policy.
- 12-9-3. Definitions.
- 12-9-4. Designation of division as agency to administer article.
- 12-9-5. Powers and duties of Board of Natural Resources as to air quality generally.
- 12-9-6. Powers and duties of director as to air quality generally.
- 12-9-7. Permit required; application; issuance; revocation, suspension, or amendment.
- 12-9-8. Renewal or revision of permit.
- 12-9-9. Notice requirements for permit applications and actions regarding permits.
- 12-9-10. Permit related fees; costs of public notice.
- 12-9-11. Inspections and investigations.
- 12-9-12. Injunctive relief.
- 12-9-13. Proceedings for enforcement.
- 12-9-14. Powers of director in situations involving imminent and substantial danger to public health.
- 12-9-15. Hearing; judicial review.
- 12-9-16. Hearings and review.
- 12-9-17. Legal assistance by Attorney General.
- 12-9-18. Powers of Governor as to air quality control generally.
- 12-9-19. Protection of confidential information obtained by division.
- 12-9-20. Continuation in effect of rules, regulations, and permits.

12-9-21. Effect of article on powers of Board of Natural Resources, department, division, and director.  
12-9-22. Noncompliance penalties.  
12-9-23. Civil penalties; procedures for imposing penalties.  
12-9-24. Criminal penalties; evidence; affirmative defenses.  
12-9-25. Small business stationary source technical and environmental compliance program; manager; advisory panel.

## **Article 2**

### **Motor Vehicle Emission Inspection and Maintenance.**

12-9-40. Short title.  
12-9-41. Legislative findings.  
12-9-42. Declaration of public policy.  
12-9-43. Definitions.  
12-9-44. Uniformity and scope of application of article.  
12-9-45. Certificate of emission inspection.  
12-9-46. Powers and duties of board; designation of commissioner or director as board's agent; power and duties of director.  
12-9-47. Further powers and duties of board; designation of department personnel as board's agents.  
12-9-48. Requirement of certificate of emission inspection; standards for issuance; inspectors, equipment, and procedures; notice of violation of emission standards; reinspection after repairs; inspection sticker; new vehicles; replacement stickers.  
12-9-49. Application to conduct emission inspections; certificate of authorization.  
12-9-50. Authority to inspect, monitor, or investigate inspection stations.  
12-9-51. Emission inspection required for motor vehicle registration; operation without registration; improper reuse.  
12-9-52. Amendment, modification, revocation, or suspension of certificate of authorization.  
12-9-53. Review of director's decision.  
12-9-54. Sale of vehicle.  
12-9-55. Prohibited acts; registration of vehicle by county without proof of inspection; penalty; withholding of funding.  
12-9-56. Rules and regulations.  
12-9-57. Effect of federal Clean Air Act requirements; repeal of article.

## **CHAPTER 10**

### **INTERSTATE COMPACTS**

## **Article 1**

### **Southern States Energy Compact.**

12-10-1. Compact enacted and entered into by State of Georgia; text of compact.  
12-10-2. Appointment of representatives to Southern States Energy Board; compensation.  
12-10-3. Board employees under merit system; establishment of retirement system.  
12-10-4. Board considered state agency for purpose of obtaining personnel services.  
12-10-5. Budget of estimated expenditures to be submitted to Governor.  
12-10-6. Appropriations for supplementary agreements.  
12-10-7. Cooperation by state departments, agencies, officers, and subdivisions with Board.  
12-10-8. Appropriation of funds to carry out article and compact.

## **Article 2**

### **Southern Growth Policies Agreement.**

12-10-20. Agreement enacted and entered into by State of Georgia; text of agreement.  
12-10-21. Bylaws and amendments filed with Division of Archives and History.  
12-10-22. Effect of article on participation with states adopting agreement before July 1, 1973.

### **Article 3**

#### **Interstate Environment Compact.**

- 12-10-40. Compact enacted and entered into; text of compact.
- 12-10-41. Commissioner as representative of state in compact.

### **Article 4**

#### **Southeastern Interstate Forest Fire Protection Compact.**

- 12-10-60. Required procedure to make compact effective; exchange of documents.
- 12-10-61. Authority of Governor to execute compact with designated states; legislative approval of compact; text of compact.
- 12-10-62. Process.
- 12-10-63. Authority to exercise powers under compact; cooperation with compact administrator.
- 12-10-64. Construction of article.

### **Article 5**

#### **Historic Chattahoochee Compact.**

- 12-10-80. Short title.
- 12-10-81. Compact enacted and entered into; text of compact.

### **Article 6**

#### **Apalachicola-Chattahoochee-Flint River Basin Compact.**

- 12-10-100. Compact enacted and entered into; text of compact.

### **Article 7**

#### **Alabama-Coosa-Tallapoosa River Basin Compact.**

- 12-10-110. Compact enacted and entered into; text of compact.

## **CHAPTER 11**

### **GEORGIA YOUTH CONSERVATION CORPS**

- 12-11-1. Short title.
- 12-11-2. Legislative findings.
- 12-11-3. Definitions.
- 12-11-4. Corps created; purposes; rules and regulations.
- 12-11-5. Director; administration of corps programs.
- 12-11-6. Identification of projects.
- 12-11-7. Enrollment of members; considerations in development of corps program; education component; independent participation by youth served by state agencies.
- 12-11-8. Location of and contracts for projects; prohibited uses of corps members.
- 12-11-9. Grants, donations, bequests; insignia.
- 12-11-10. Coordinated job training and placement services.
- 12-11-11. Conservation Corps Advisory Council.

## **CHAPTER 12**

### **ASBESTOS SAFETY ACT**

- 12-12-1. Short title.
- 12-12-2. Purpose of chapter.
- 12-12-3. Definitions.
- 12-12-4. Rules and regulations; schedule of contractor license and project fees.
- 12-12-5. Powers and duties of director.
- 12-12-6. License requirement; application; renewal; exception.
- 12-12-7. Training requirements.
- 12-12-8. Reciprocity.
- 12-12-9. Denial, revocation, or suspension of license; grounds; review of decision.



12-12-10. Notice of commencement of project; contents; project fee; certification of completion.  
12-12-11. Compliance with chapter required.  
12-12-12. Investigation rights of director; contractor to make records available.  
12-12-13. Cease and desist orders.  
12-12-14. Injunctions; restraining and other orders.  
12-12-15. Imminent and substantial danger; remedies of director.  
12-12-16. Civil penalty for violation; hearing and judicial review; disposition of penalties.  
12-12-17. Hearing and judicial review procedure.  
12-12-18. Judgment in accordance with order of director or administrative law judge.  
12-12-19. Attorney General to provide legal representation.  
12-12-20. Sovereign immunity not waived; legal duties of contractor, project monitor, or asbestos worker not relieved by chapter.  
12-12-21. Sovereign immunity.

## **CHAPTER 13**

### **UNDERGROUND STORAGE TANKS**

12-13-1. Short title.  
12-13-2. Public policy.  
12-13-3. Definitions.  
12-13-4. Exceptions to chapter.  
12-13-5. Rules and regulations; enforcement powers.  
12-13-6. Powers and duties of director.  
12-13-7. Performance standards applicable until rules and regulations effective.  
12-13-8. Investigations.  
12-13-9. Establishing financial responsibility; claims against guarantor; Underground Storage Tank Trust Fund.  
12-13-10. Environmental assurance fees; late participation fee.  
12-13-11. Corrective action for release of petroleum product into environment.  
12-13-12. Recovery in event of discharge or threat of discharge of regulated substance; lien.  
12-13-13. Notification by owner of underground storage tank.  
12-13-14. Corrective action for violations of chapter, rules and regulations, or orders and for release of regulated substance into environment.  
12-13-15. Injunctions and restraining orders.  
12-13-16. Hearings and review.  
12-13-17. Judgment in accordance with division's order.  
12-13-18. Required compliance with chapter; proof that petroleum subjected to environmental fee; violations of chapter; access to property.  
12-13-19. Violations; imposition of penalties.  
12-13-20. Emergency orders; hearing.  
12-13-21. Public access to records.  
12-13-22. Representation by Attorney General.

## **CHAPTER 14**

### **OIL OR HAZARDOUS MATERIAL SPILLS OR RELEASES**

12-14-1. Definitions.  
12-14-2. Reporting spilled or released oil or hazardous substance; promulgation of rules and regulations by Board of Natural Resources.  
12-14-3. Notification of Environmental Protection Division of spill or release; development of procedures to notify other governmental agencies.  
12-14-4. Civil penalties; procedures for imposing penalties.

## **CHAPTER 15**

### **SEWAGE HOLDING TANKS**

#### **Article 1**

##### **Construction Sites.**

- 12-15-1. Short title.
- 12-15-2. Legislative findings.
- 12-15-3. Definitions.
- 12-15-4. When sewage holding tanks may be utilized.
- 12-15-5. Sewage holding tank specifications; removal of sewage from tanks; disposal of sewage; manifests.
- 12-15-6. Responsibility for ensuring compliance with article.
- 12-15-7. Enforcement of compliance with article.
- 12-15-8. Violations.

#### **Article 2**

##### **Commercial Waste.**

- 12-15-20. Definitions.
- 12-15-21. Removal of commercial waste in clean and sanitary fashion; registration of waste transporter; disposal; manifest system; penalty for violations.
- 12-15-22. Promulgation of rules and regulations.
- 12-15-23. Enforcement of compliance with article.
- 12-15-24. Enactment and enforcement of local ordinances.

## **CHAPTER 16**

### **ENVIRONMENTAL POLICY**

#### **Article 1**

##### **General Provisions.**

- 12-16-1. Short title.
- 12-16-2. Legislative findings.
- 12-16-3. Definitions.
- 12-16-4. Determination of adverse effect on quality of environment; environmental effects report; consultation with other agencies; publication of notice of proposed action.
- 12-16-5. Public hearing; notice of decision; challenge to decision.
- 12-16-6. Reconciliation of existing authority required.
- 12-16-7. Effect of article on federal environmental policy requirements.
- 12-16-8. Director to issue guidelines to assist government agencies.

#### **Article 2**

##### **Procedure for Amending Regulations.**

- 12-16-20. Definitions.
- 12-16-21. Detailed statement of rationale for regulatory change required.
- 12-16-22. Exceptions allowed for public health and welfare.
- 12-16-23. Construction with Administrative Procedures Act.

## **TITLE 44 PROPERTY**

### **CHAPTER 8 WATER RIGHTS**

- 44-8-1. Ownership of running water; right to divert or adulterate water.
- 44-8-2. Nonnavigable streams - Rights of adjoining owners; principles when stream is boundary; accretions.
- 44-8-3. Nonnavigable streams - Exclusive possession by owner; interference by legislature with lawful use of stream.
- 44-8-4. Nonnavigable streams - Construction of dams, canals, and appurtenant works; liability for resultant damages.
- 44-8-5. Rights of adjoining landowners in navigable streams.
- 44-8-6. Nonnavigable tidewaters; title; rights of adjoining landowners; principles when tidewaters are boundaries; accretions.
- 44-8-7. Rights of owners of land adjacent to or covered by navigable tidewaters.
- 44-8-8. Exclusive appropriation of tidewaters.
- 44-8-9. Construction of levees and ditches; diversion of watercourses.
- 44-8-10. Construction or establishment of private bridge or ferry; grant of franchise to construct or operate public bridge or ferry; compensation to landowner for interference with possession; when franchise exclusive generally; exclusive franchises pertaining to streets or sidewalks.

**TITLE 51**  
**TORTS**

**CHAPTER 9**  
**INJURIES TO REAL ESTATE**

51-9-7. Diversion, obstruction, or pollution of stream as trespass.

**TITLE 52**  
**WATERS OF THE STATE, PORTS, AND WATERCRAFT**

**CHAPTER 1**  
**GENERAL PROVISIONS**

**Article 1**  
**Protection of Tidewaters.**

- 52-1-1. Short title.
- 52-1-2. Legislative findings and declaration of policy.
- 52-1-3. Definitions.
- 52-1-4. Declaration of public nuisance.
- 52-1-5. Order for removal of structures; service and posting of order.
- 52-1-6. Hearings and review.
- 52-1-7. Seizure and removal of structures; notice; sale or disposal.
- 52-1-8. Remedies not exclusive.
- 52-1-9. Allowance of time for finding new residence.
- 52-1-10. Issuance of permit; term; revocation.

**Article 2**  
**Right of Passage.**

- 52-1-30. Short title.
- 52-1-31. Legislative findings and declaration of policy.
- 52-1-32. Definitions.
- 52-1-33. Declaration of public nuisance.
- 52-1-34. Order for removal of structures; service and posting of order.
- 52-1-35. Hearings and review.
- 52-1-36. Seizure and removal of structures; notice; sale or disposal.
- 52-1-37. Remedies not exclusive.
- 52-1-38. Allowance of time for finding new residence.
- 52-1-39. Issuance of permit; term; revocation.

**CHAPTER 2**  
**GEORGIA PORTS AUTHORITY**

- 52-2-1. Short title.
- 52-2-2. Definitions.
- 52-2-3. Projects which may be considered "self-liquidating"; lease or sale of manufacturing or processing facilities; inclusion in projects of leased facilities and facilities acquired for use as ports.
- 52-2-4. Creation of authority; status of authority as an instrumentality of state and a public corporation.
- 52-2-5. Composition of authority; appointment, terms, and qualifications of members generally; filling of vacancies; election of chairperson, vice chairperson, and secretary-treasurer; quorum.
- 52-2-6. Compensation of members and reimbursement for expenses.
- 52-2-7. Making of rules and regulations; delegation of powers and duties; perpetual existence of authority.
- 52-2-8. Eligibility for membership.
- 52-2-9. Powers of authority generally.
- 52-2-10. Applicability of traffic laws; enforcement by security guards; traffic citations; issuance of bench warrant upon failure of offender to appear; enforcement of dock related city ordinances; venue; powers and duties of investigators.
- 52-2-11. Power of authority to borrow money, to execute evidences of indebtedness, and to secure such indebtedness; sale and other disposition of property; utilization of proceeds of sale.
- 52-2-12. Funds for acquisition of land and construction of port facilities.
- 52-2-13. Approval and consent of State Properties Commission for acquisition of real property by authority.
- 52-2-14. Conveyance of Medical Depot site to authority; power to sell conveyed surplus lands and improvements; power to borrow and to issue revenue anticipation certificates.

52-2-15. Revenue bonds - Issuance; payment of principal and interest from special fund; dating of bonds; determination of rate of interest; time of maturity; redemption before maturity.

52-2-16. Revenue bonds - Form of bonds; denominations; place of payment of principal and interest.

52-2-17. Revenue bonds - Signatures; seal.

52-2-18. Revenue bonds - Status of bonds as negotiable instruments; tax exemption for bonds and for income therefrom.

52-2-19. Revenue bonds - Issuance in coupon or registered form.

52-2-20. Revenue bonds - Determination of price; use and manner of disbursement of proceeds; procedure where proceeds are less than or greater than cost of projects.

52-2-21. Revenue bonds - Issuance of interim receipts, interim certificates, and temporary bonds; replacement of mutilated, destroyed, or lost bonds.

52-2-22. Revenue bonds - Conditions precedent to issuance; application of bonds of a single issue to payment of one or more projects; effective date of resolutions providing for issuance; passage of resolutions.

52-2-23. Revenue bonds - Aid by Georgia Building Authority.

52-2-24. Revenue bonds - Status of bonds as a debt of state or a pledge of faith and credit of state; issuance as obligating state to levy tax or make appropriation; obligation of state and authority to pay principal and interest on bonds otherwise than from earnings of projects; recitals on face of bonds.

52-2-25. Revenue bonds - Securing of bonds by trust indenture.

52-2-26. Revenue bonds - Remedies of bondholders and trustee.

52-2-27. Revenue bonds - Protection of rights of bondholders.

52-2-28. Revenue bonds - Revenue refunding bonds.

52-2-29. Revenue bonds - Status of bonds as legal investments and as securities for deposits.

52-2-30. Revenue bonds - Confirmation and validation of bonds; venue of actions to confirm and validate bonds or to enforce rights under chapter.

52-2-31. Power of authority to fix, revise, and collect charges; factors governing determination of amount of rentals and other charges; creation, use, and disposition of sinking fund; cancellation of purchased or redeemed bonds.

52-2-32. Status of contracted-for rentals as obligations of state; payment of rentals; power of authority to enforce lessees' duty to perform covenants and obligations; assignment of rentals due.

52-2-33. Duty of authority to prescribe rules and regulations for operation of projects; duty of authority to impose and collect rentals and other charges for use of facilities of projects.

52-2-34. Acceptance of grants from federal agencies and of contributions of money and property from other sources.

52-2-35. Requirement as to competitive bidding for contracts for new construction.

52-2-36. Status of moneys received under chapter as trust funds; provision by authority for payment of moneys to designated trustee; investment of moneys; sale of investments and reinvestment.

52-2-37. Creation of authority and carrying out of authority's corporate purpose as constituting a public purpose; covenant with bondholders as to tax-exempt status of authority's property.

52-2-38. Construction of chapter.

52-2-39. Supplemental nature of chapter.

## **CHAPTER 3**

### **INTRACOASTAL WATERWAY**

52-3-1. Purpose of chapter.

52-3-2 and 52-3-3. [Repealed].

52-3-4. Cooperation with federal government; acquisition of property and rights.

52-3-5. Exercise of power of eminent domain.

52-3-6. Seal; election of officers [Repealed].

52-3-7. Right of Department of Transportation to receive and use gifts and donations of money and property.

52-3-8. Procedure in cases where property required for right of way or spoil disposal areas has been leased for cultivation and gathering of oysters.

52-3-9. Claims for damages to oysters.

52-3-10. Power of Governor to assign assistant attorney general to assist commission [Repealed].

52-3-11. Right of Department of Transportation to enter lands in order to locate rights of way.

52-3-12. Effect of chapter on state's jurisdiction over lands affected by chapter; effect on service of process on such lands.

## **CHAPTER 4**

### **CANAL COMPANIES**

- 52-4-1. Filing of petition for incorporation; contents of petition; filing fee.
- 52-4-2. Issuance of certificate of incorporation.
- 52-4-3. Maintenance by Secretary of State of files and books regarding canal companies.
- 52-4-4. Time of commencement of corporate existence; duration of corporate existence.
- 52-4-5. Petitioners as constituting first board of directors; election of officers; prescription of rules and bylaws; opening books of subscription for capital stock.
- 52-4-6. Publication of notice upon subscription for all of capital stock and payment of 10 percent thereof; authorization for commencing transaction of business; personal liability of directors and stockholders.
- 52-4-7. Location of principal office.
- 52-4-8. Powers and duties of companies generally.
- 52-4-9. Right of corporation to increase or decrease capital stock.
- 52-4-10. Power of companies to enlarge works and appliances of canals and branch canals and to deepen and widen canals.
- 52-4-11. Furnishing of canal water by canal companies; charges for use of water.
- 52-4-12. Toll rates for use of canals.
- 52-4-13. Encroachment of canals upon public roads; construction and maintenance of bridges.
- 52-4-14. Mortgage, sale, or lease of canal, other properties, corporate rights, and franchises.
- 52-4-15. Disagreements as to compensation for taking of lands, tenements, or riparian rights pursuant to chapter.
- 52-4-16. Taxes applicable to canal companies.

## **CHAPTER 5**

### **NAVIGATION COMPANIES**

- 52-5-1. Granting of corporate powers and privileges by Secretary of State.
- 52-5-2. Filing of petition for incorporation; contents of petition; attachment of affidavit of incorporators; endorsement, recordation, and filing of petitions by Secretary of State.
- 52-5-3. Issuance of certificate of incorporation generally.
- 52-5-4. Time of commencement of corporate existence; payment of fee for issuance of certificate.
- 52-5-5. Duty of Secretary of State to assure company's compliance with chapter prior to issuance of certificate; certificate as constituting evidence of corporation's existence and compliance with chapter.
- 52-5-6. Organization of company; quorum; election of first board of directors; qualifications of directors; election and appointment of officers and agents; annual election of, and filling of vacancies on, board of directors.
- 52-5-7. Opening books of subscription for capital stock; restriction on increase of capital stock.
- 52-5-8. Manner of payment for stock; auction sale of stock upon default by subscriber; giving delinquent subscriber notice of auction sale.
- 52-5-9. Stock as constituting personal property; determination of manner of transfer of stock.
- 52-5-10. Procedure for increase of capital stock.
- 52-5-11. Powers of companies generally.
- 52-5-12. Adoption of chapter by companies incorporated prior to April 1, 1969, and by persons otherwise owning or operating a navigation business.

## **CHAPTER 6**

### **PILOTS AND PILOTAGE**

#### **Article 1**

#### **Board of Pilotage Commissioners.**

- 52-6-1. Composition of board; terms of commissioners.
- 52-6-2. Filling of vacancies on board.
- 52-6-3. Qualifications of commissioners.

- 52-6-4. Areas for which commissioners appointed.
- 52-6-5. Appointment of master pilot; duties of master pilot generally.
- 52-6-6. Right of commissioners to bring an action to recover forfeitures.
- 52-6-7. Manner of application of fines and forfeitures.
- 52-6-8. Keeping of records by board; designation of chairman of board; keeping list of pilots whose licenses have been revoked; access of public to records.
- 52-6-9. Salary or fees of secretary.
- 52-6-10. Determination of location of office of commissioners; location of books, papers, and records of commissioners.
- 52-6-11. Rules and regulations; reciprocal pilotage in port of St. Marys and tributaries of St. Marys River.

## **CHAPTER 7**

### **REGISTRATION, OPERATION, AND SALE OF WATERCRAFT**

#### **Article 1**

##### **General Provisions.**

- 52-7-1. Short title.
- 52-7-2. Declaration of policy.
- 52-7-3. Definitions.
- 52-7-4. Requirement as to numbering of vessels.
- 52-7-5. (Effective until March 31, 2012. See note) Numbering of vessels; generally.
- 52-7-5. (Effective March 31, 2012. See note.) Numbering of vessels; generally.
- 52-7-6. Numbering of vessels; exemptions from numbering requirements.
- 52-7-7. Numbering of vessels; dealers' vessels.
- 52-7-8. Classification of vessels; required equipment.
- 52-7-8.1. Discharge of sewage from vessels on lakes; use of vessels with marine toilets on protected fresh waters; certificate and recordation requirements.
- 52-7-8.2. Restrictions on operation of personal watercraft.
- 52-7-8.3. Operation of watercraft; identification; operation by minors.
- 52-7-9. Boat liveries.
- 52-7-10. Exhausts to be muffled; exemptions; noise level testing.
- 52-7-11. Lights.
- 52-7-12. Operation of watercraft while under influence of alcohol or drugs; legal drug use not exempted; blood and other chemical tests; test refusal; owner's liability for allowing another to operate while intoxicated; civil and criminal actions; child endangerment.
- 52-7-12.1. Reckless operation of vessel or other water device.
- 52-7-12.2. Homicide by vessel.
- 52-7-12.3. Feticide by vessel.
- 52-7-12.4. Serious injury by vessel.
- 52-7-12.5. Ordering drug or alcohol tests; implied consent notice; reports; suspension; hearing; certificate of inspection.
- 52-7-12.6. Terms of suspension; return of operating privilege; operation when suspended.
- 52-7-13. Boating safety zones; restrictions on use of motors and operation of house boats on certain lakes; exceptions.
- 52-7-14. Collisions, accidents, and casualties; salvage rights.
- 52-7-15. Furnishing information to federal officials and agencies.
- 52-7-16. Towing persons on water skis, aquaplanes, surfboards or similar device.
- 52-7-17. Speed and load restrictions; riding of bow or gunwale of vessel.
- 52-7-18. Rules of the road for boat traffic.
- 52-7-19. Regattas, boat races, marine parades, tournaments, and exhibitions.
- 52-7-20. Operation of vessels in vicinity of regulatory markers and aids to navigation; tampering with regulatory markers and aids to navigation.
- 52-7-21. Local regulations concerning operation, equipment, numbering, and other matters relating to vessels.
- 52-7-22. Safety and educational programs.
- 52-7-23. Power of Board of Natural Resources to adopt rules and regulations.
- 52-7-24. Filing and publication of rules and regulations and amendments thereto.
- 52-7-25. Enforcement of article.



52-7-26. Penalty.

## **Article 2**

### **Displaying of Watercraft Information.**

52-7-40. Definitions.

52-7-41. Requirement as to attachment of capacity plates to vessels generally.

52-7-42. Information to be marked on capacity plate.

52-7-43. Determination of maximum capacity.

52-7-44. Affixing of capacity plate by person other than vessel manufacturer; effect of such action on liability of manufacturer.

52-7-45. Information on capacity plate as constituting a warranty; nature of warranty.

52-7-46. Alternative compliance with article if affixing of capacity plate deemed impracticable or undesirable.

52-7-47. Exemption of watercraft by rules and regulations of Board of Natural Resources.

52-7-48. Promulgation of rules and regulations by Board of Natural Resources generally.

52-7-49. Exemption of watercraft manufactured for personal use.

52-7-50. Applicability of article.

52-7-51. Penalty.

## **Article 3**

### **Abandoned Vessels.**

52-7-70. Definitions.

52-7-71. Removal and storage of vessels; procedure.

52-7-72. Authority of peace officer to cause removal of unattended vessels; duties.

52-7-73. Lien on vessel; foreclosure in courts competent to hear civil cases.

52-7-74. Procedure for foreclosure.

52-7-75. Public sale of vessel; disposition of excess proceeds.

52-7-76. Issuance of certificate of title.

52-7-77. Payment of balance remaining after satisfaction of liens, security interests, and debts.

## **CHAPTER 8**

### **DISCHARGE OF SUBSTANCES DANGEROUS TO NAVIGATION OR PROPERTY**

52-8-1. Throwing stone, gravel, or other ballast into navigable waters.

52-8-2. Duty of pilots to report unlawful discharge of stone, gravel, or other ballast into bays and harbors.

52-8-3. Recovery of forfeiture; attachment and replevy of vessels.

52-8-4. Power of municipalities to prohibit throwing or depositing of substances which might lessen depth of navigable waters.

52-8-5. Power of municipalities to prohibit throwing or depositing of substances dangerous to navigation or injurious to vessels.

## **CHAPTER 9**

### **RIVER AND HARBOR DEVELOPMENT**

52-9-1. Projects for improving navigation channels.

52-9-2. Disposal of sand and sediment originating from water navigation related projects.

## **CHAPTER 10**

### **FOREIGN TRADE ZONES**

52-10-1. "Public corporation" defined.

52-10-2. Application by public corporation to establish and operate foreign trade zone.

52-10-3. Application by private corporation to establish and operate foreign trade zone.

52-10-4. Authority to establish and operate foreign trade zone; conditions and restrictions of act of Congress.

**APPENDIX A2:**  
**TEXTS OF SELECTED GEORGIA WATER RIGHTS LAWS**

**RIPARIAN RIGHTS**

**44-8-1. Ownership of running water; right to divert or adulterate water.**

Running water belongs to the owner of the land on which it runs; but the landowner has no right to divert the water from its usual channel nor may he so use or adulterate it as to interfere with the enjoyment of it by the next owner. (Ga. L. 1855-56, p. 12, § 1; Code 1863, § 2206; Code 1868, § 2201; Code 1873, § 2227; Code 1882, § 2227; Civil Code 1895, § 3057; Civil Code 1910, § 3629; Code 1933, § 85-1301.)

**44-8-2. Nonnavigable streams - Rights of adjoining owners; principles when stream is boundary; accretions.**

The beds of nonnavigable streams belong to the owner of the adjacent land. If the stream is a dividing line between two parcels of land, each owner's boundary shall extend to the thread or the center of the main current of the water. If the current changes gradually, the boundary line follows the current. If from any cause the stream takes a new channel, the original line, if identifiable, remains the boundary. Gradual accretions of land on either side accrue to the owner of that side. (Orig. Code 1863, § 2207; Code 1868, § 2202; Code 1873, § 2228; Code 1882, § 2228; Civil Code 1895, § 3058; Civil Code 1910, § 3630; Code 1933, § 85-1302.)

**51-9-7. Diversion, obstruction, or pollution of stream as trespass.**

The owner of land through which nonnavigable watercourses flow is entitled to have the water in such streams come to his land in its natural and usual flow, subject only to such detention or diminution as may be caused by a reasonable use of it by other riparian proprietors. The diverting of the stream in whole or in part from its natural and usual flow, or the obstructing thereof so as to impede its course or cause it to overflow or injure the land through which it flows or any right appurtenant thereto, or the polluting thereof so as to lessen its value to the owner of such land shall constitute a trespass upon the property. (Orig. Code 1863, § 2960; Code 1868, § 2967; Code 1873, § 3018; Code 1882, § 3018; Civil Code 1895, § 3879; Civil Code 1910, § 4475; Code 1933, § 105-1407.)

**REGULATED RIPARIAN RIGHTS**

**12-5-31. Permits for withdrawal, diversion, or impoundment of surface waters; monitoring, recording, and reporting water withdrawals.**

(a)(1) No person shall make any withdrawal, diversion, or impoundment of any of the surface waters of the state for whatever use without obtaining a permit from the director; provided, however, that no permit shall be required for:

(A) Any such withdrawal which does not involve more than 100,000 gallons per day on a monthly average;

(B) Any such diversion which does not reduce the flow of the surface waters at the point where the watercourse, prior to diversion, leaves the person's or persons' property or properties on which the diversion occurred, by more than 100,000 gallons per day on a monthly average;

(C) Any such diversion accomplished as part of construction for transportation purposes which does not reduce the flow of surface waters in the diverted watercourse by more than 150,000 gallons per day on a monthly average; or

(D) Any such impoundment which does not reduce the flow of the surface waters immediately downstream of the impoundment by more than 100,000 gallons per day on a monthly average.

(2) No permit shall be required for a reduction of flow of surface waters during the period of construction of an impoundment, including the initial filling of the impoundment, or for

farm ponds or farm impoundments constructed and managed for the sole purpose of fish, wildlife, recreation, or other farm uses.

(3) Notwithstanding any other provision of this Code section to the contrary, a permit for the withdrawal or diversion of surface waters for farm uses shall be issued by the director to any person when the applicant submits an application which provides reasonable proof that the applicant's farm use of surface waters occurred prior to July 1, 1988, and when any such application is submitted prior to July 1, 1991. If submitted prior to July 1, 1991, an application for a permit to be issued based upon farm uses of surface waters occurring prior to July 1, 1988, shall be granted for the withdrawal or diversion of surface waters at a rate of withdrawal or diversion equal to the greater of the operating capacity in place for withdrawal or diversion on July 1, 1988, or, when measured in gallons per day on a monthly average for a calendar year, the greatest withdrawal or diversion capacity during the five-year period immediately preceding July 1, 1988. If submitted after July 1, 1991, or, regardless of when submitted, if it is based upon a withdrawal or diversion of surface waters for farm uses occurring or proposed to occur on or after July 1, 1988, an application shall be subject to evaluation and classification pursuant to subsections (e), (f), and (g) of this Code section, but a permit based upon such evaluation and classification shall be issued to ensure the applicant's right to a reasonable use of such surface waters. Any permit issued pursuant to this paragraph shall be conditioned upon the requirement that the permittee shall provide, on forms prescribed by the director, information relating to a general description of the lands and number of acres subject to irrigation and the permit; a description of the general type of irrigation system used; the source of withdrawal water such as river, stream, or impoundment; and pump information, including rated capacity, pump location, and power information. Permits issued under this paragraph shall have no term and may be transferred or assigned to subsequent owners of the lands which are the subject of such permit; provided, however, that the division shall receive written notice of any such transfer or assignment. Any modification in the use or capacity conditions contained in the permit or in the lands which are the subject of such permit shall require the permittee to submit an application for review and approval by the director consistent with this Code section. Nothing in this paragraph shall be construed as a repeal or modification of Code Section 12-5-46.

(b) For purposes of this Code section, the term:

(1) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources, or his designee.

(2) "Diversion" means a turning aside or altering of the natural course of surface waters.

(3) "Farm uses" means irrigation of any land used for general farming, forage, aquaculture, pasture, turf production, orchards, or tree and ornamental nurseries; provisions of water supply for farm animals, poultry farming, or any other activity conducted in the course of a farming operation. Farm uses shall also include the processing of perishable agricultural products and the irrigation of recreational turf, except in the Chattahoochee River watershed upstream from Peachtree Creek, where irrigation of recreational turf shall not be considered a farm use.

(4) "Impoundment" means the storing or retaining of surface water by whatever method or means.

(5) "Surface water(s) of the state" or "surface water(s)" means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs producing in excess of 100,000 gallons per day, and all other bodies of surface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.

(6) "Withdrawal" means the taking away of surface water from its natural course.

(c) To obtain a permit pursuant to this Code section, the applicant must establish that the proposed withdrawal, diversion, or impoundment of surface waters is consistent with this article.

(d) All permit applications filed with the director under this Code section shall contain the name and address of the applicant or, in the case of a corporation, the address of its principal business office in this state; the date of filing; the source of the water supply; the quantity of water applied for; the use to be made of the water and any limitation thereon; the place of use; the location of the withdrawal, diversion, or impoundment; for those permits which indicate an increase in water usage, except for permits solely for agricultural use, a water conservation plan approved by the director and prepared based on guidelines issued by the

director; and such other information as the director may deem necessary; provided, however, that any required information already provided the director by the applicant in the context of prior dealings with the division, which information is still correct, may be incorporated into the application by adequate reference to same. The director shall collect and disseminate such technical information as the director deems appropriate to assist applicants in the preparation of water conservation plans.

(e) Subject to subsection (g) of this Code section, the Board of Natural Resources shall by rule or regulation establish a reasonable system of classification for application in situations involving competing uses, existing or proposed, for a supply of available surface waters. Such classifications shall be based upon but not necessarily limited to the following factors:

- (1) The number of persons using the particular water source and the object, extent, and necessity of their respective withdrawals, diversions, or impoundments;
- (2) The nature and size of the water source;
- (3) The physical and chemical nature of any impairment of the water source adversely affecting its availability or fitness for other water uses;
- (4) The probable severity and duration of such impairment under foreseeable conditions;
- (5) The injury to public health, safety, or welfare which would result if such impairment were not prevented or abated;
- (6) The kinds of businesses or activities to which the various uses are related and the economic consequences;
- (7) The importance and necessity of the uses, including farm uses, claimed by permit applicants and the extent of any injury or detriment caused or expected to be caused to other water uses;
- (8) Diversion from or reduction of flows in other watercourses;
- (9) The prior investments of any person in lands, and plans for the usage of water in connection with such lands which plans have been submitted to the director within a reasonable time after July 1, 1977, or, if for farm uses, after July 1, 1988; provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including potential as well as present use; and
- (10) The varying circumstances of each case.

(f) In the event two or more competing applicants or users qualify equally under subsection (e) of this Code section, the director is authorized to grant permits to applicants or modify the existing permits of users for use of specified quantities of surface waters on a prorated or other reasonable basis in those situations where such action is feasible; provided, however, the director shall give preference to an existing use over an initial application.

(g) The division shall take into consideration the extent to which any withdrawals, diversions, or impoundments are reasonably necessary, in the judgment of the director, to meet the applicant's needs and shall grant a permit which shall meet those reasonable needs; provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including but not limited to public use, farm use, and potential as well as present use; and provided, further, that the director shall grant a permit to any permit applicant who on July 1, 1977, has outstanding indebtedness in the form of revenue certificates or general obligation bonds which are being amortized through the sale of surface water, the permitted quantity of which shall be at least in an amount consistent with that quantity for which the revenue certificates or general obligation bonds were issued.

(h) Except for applications filed pursuant to paragraph (3) of subsection (a) of this Code section, permits may be granted for any period of time not less than ten years, unless the applicant requests a shorter period of time, nor more than 50 years. The director may base the duration of such permits on any reasonable system of classification based upon but not necessarily limited to such factors as source of supply and type of use. In evaluating any application for a permit for the use of water for a period of 25 years or more, the director shall evaluate the condition of the water supply to assure that the supply is adequate to meet the multiple needs of the citizens of the state as can reasonably be projected for the term of the permit and ensure that the issuance of such permit is based upon a water development and conservation plan for the applicant or for the region. Such water development and conservation plan for the applicant or for the region shall promote the conservation and reuse of water within the state, guard against a shortage of water within the state, promote the efficient use of the water resource, and be consistent with the public welfare of the state. The

board shall promulgate regulations for implementation of this subsection, including provisions for review of such permits periodically or upon a substantial reduction in average annual volume of the water resource which adversely affects water supplies to determine that the permittee continues in compliance with the conditions of the permit and that the plan continues to meet the overall supply requirements for the term of the permit. In the event the director determines that a regional plan is required in connection with any application for a permit for the use of water for a period of 25 years or more, the division or a person or entity designated by the division may develop such a plan. Such regional plan shall include water development, conservation, and sustainable use and shall be based upon detailed scientific analysis of the water source, the projected future condition of the resource, current demand, and estimated future demands on the resource.

(i) A permittee may seek modification of any of the terms of an issued permit. The director may approve the proposed modification if the permittee establishes that a change in conditions has resulted in a need by the permittee of more water than is allowed under the existing permit, or that the proposed modification would result in a more efficient utilization of water than is possible under the existing permit, or that a proposed change in conditions would result in a need by the permittee of more water than is allowed under the existing permit. Any such modification shall be consistent with the health and safety of the citizens of this state and with this article. In any administrative review proceeding resulting from an action of the director under this subsection, the burden of proof in establishing that the requisite criteria have been met shall be upon the person seeking such modification.

(j) A permittee may seek renewal of a permit issued pursuant to this Code section from the director at any time within six months prior to the date of expiration of the permit. Except as otherwise specified in this Code section, all permit renewal applications shall be treated in the same manner as the initial permit application.

(k) The director may revoke, suspend, or modify a permit issued pursuant to this Code section as follows:

(1) For any material false statement in an application for a permit to initiate, modify, or continue a use of surface waters, or for any material false statement in any report or statement of fact required of the permittee pursuant to this Code section or pursuant to the conditions contained in a permit granted under this Code section, the director may revoke the user's permit, in whole or in part, permanently or temporarily;

(2) For any willful violation of the conditions of a permit granted pursuant to this Code section, the director may revoke the user's permit, in whole or in part, permanently or temporarily;

(3) For violation of any provision of this Code section, the director may revoke the permit, in whole or in part, for a period not to exceed one year;

(4) For nonuse of the water supply (or a significant portion thereof) allowed by the permit for a period of two consecutive years or more, the director may revoke the permit permanently, in whole or in part, unless the permittee can reasonably demonstrate that his nonuse was due to extreme hardship caused by factors beyond his control, except that this paragraph shall not apply to farm use permits issued pursuant to paragraph (3) of subsection (a) of this Code section after initial use has commenced;

(5) The director may revoke a permit permanently, in whole or in part, with the written consent of the permittee;

(6) The director may suspend or modify a permit, except farm use permits, if he should determine through inspection, investigation, or otherwise that the quantity of water allowed under the permit is greater than that needed by the permittee for the particular use upon which the application for permit was based or would prevent other applicants from reasonable use of surface waters, including farm uses;

(7) The director may suspend or modify a farm use permit if he should determine through inspection, investigation, or otherwise that the quantity of water allowed under the permit would prevent other applicants from reasonable use of surface waters for farm use; and

(8) Consistent with the considerations set forth in subsection (g) of this Code section, the director may revoke, suspend, or modify a permit for any other good cause consistent with the health and safety of the citizens of this state and with this article.

In the event of modification, suspension, or revocation of a permit, the director shall serve written notice of such action on the permit holder and shall set forth in such notice the reason for such action.

(l) Emergency period of water shortage:

(1) Whenever it clearly appears to the director from specific facts shown by affidavits of residents of the affected area of this state that an emergency period of water shortage exists within such area, so as to place in jeopardy the health or safety of the citizens of such area or to threaten serious harm to the water resources of the area, he may by emergency order impose such restrictions on one or more permits previously issued pursuant to this Code section as may be necessary to protect adequately such citizens or water resources; provided, however, such order shall not be issued until an effort has been made to give written notice of the proposed action by certified mail or statutory overnight delivery to the permittee or permittees to be affected. Such written notice shall allow such permittee or permittees five days from the date of mailing of the notice to appear before the director in opposition to the proposed action. The director may impose such restrictions based upon any reasonable system of classification established by the Board of Natural Resources through rule or regulation. Such system of classification shall be based upon but not necessarily limited to those factors set forth in subsection (e) of this Code section;

(2) The director shall specify in such order any change in the conditions of the permit, any suspension of the permit, or any other restriction on withdrawal, diversion, or impoundment of surface waters for the duration of the emergency water shortage and shall serve same on the person by hand delivery or certified mail or statutory overnight delivery. Except as to farm uses, any such change, suspension, or other restriction shall be effective immediately upon receipt of such order by the permittee, his agent for service of process, or any agent or employee of the permittee who receives the notification at the permittee's principal place of business in the state. Any permittee, other than a farm use permittee, to whom such order is directed shall comply therewith immediately. Upon application to a hearing officer appointed by the Board of Natural Resources of this state, a permittee, including a farm use permittee, shall be afforded a hearing within 20 days of receipt of such notice by the hearing examiner in accordance with subsection (c) of Code Section 12-2-2. Farm use permittees may continue to make use of water to their permitted capacity during the appeal process, but failure to timely request a hearing in accordance with subsection (c) of Code Section 12-2-2 shall waive such right;

(3) During emergency periods of water shortage, the director shall give first priority to providing water for human consumption and second priority to farm use;

(4) The importance and necessity of water for industrial purposes are in no way modified or diminished by this Code section; and

(5) Upon expiration of the emergency period of water shortage, as determined by the director, the director shall immediately notify each affected permittee, in writing, of such expiration, and the permittees shall thereafter be authorized to operate under the permit as issued prior to the emergency period of water shortage.

(m) For all permits, including without limitation farm use permits, issued under this Code section, whenever required to carry out the objectives of this Code section, including but not limited to determining whether or not any person is in violation of any provision of this Code section or any rule or regulation promulgated pursuant to this Code section; encouraging or ensuring compliance with any provision of this Code section or any rule or regulation promulgated pursuant to this Code section; determining whether or not any person is in violation of any permit condition; or establishing a data bank on the usage of surface waters in a particular area or areas of this state, the director may by order, permit, or otherwise, in writing, require any person holding a permit under this Code section, or any other person who the director reasonably believes is withdrawing, diverting, or impounding surface waters in violation of the permitting requirements of this Code section, to:

(1) Establish and maintain records;

(2) Make reports;

(3) Install, use, and maintain monitoring equipment or methods; and

(4) Provide such other information as the director may reasonably require.

Notwithstanding the foregoing provisions of this subsection, any demand for such information by the director, which information has already been provided to the director by such person in the context of prior dealings with the division, and which is still correct, may be satisfied by adequate reference to same.

(m.1)(1) The State Soil and Water Conservation Commission shall have the duty of implementing a program of measuring farm uses of water in order to obtain clear and

accurate information on the patterns and amounts of such use, which information is essential to proper management of water resources by the state and useful to farmers for improving the efficiency and effectiveness of their use of water, meeting the requirements of subsection (m) of this Code section, and improving water conservation. Accordingly, the State Soil and Water Conservation Commission shall on behalf of the state purchase, install, operate, and maintain water-measuring devices for farm uses that are required by this Code section to have permits. As used in this paragraph, the term "operate" shall include reading the water-measuring device, compiling data, and reporting findings.

(2) For purposes of this subsection, the State Soil and Water Conservation Commission:

(A) May conduct its duties with commission staff and may contract with other persons to conduct any of its duties;

(B) May receive and use state appropriations, gifts, grants, or other sources of funding to carry out its duties;

(C) In consultation with the director, shall develop a priority system for installation of water-measuring devices for farm uses that have permits as of July 1, 2003. The commission shall, provided that adequate funding is received, install and commence operation and maintenance of water-measuring devices for all such farm uses by July 1, 2009; provided, however, that the commission shall not install a water-measuring device on any irrigation system for such a farm use if such irrigation system is equipped with a meter as of July 1, 2003, and such meter is determined by the commission to be properly installed and operable, but any subsequent replacement or maintenance of such an irrigation system that necessitates replacement of such meter shall necessitate installation of a water-measuring device by the commission;

(D) May charge any permittee the commission's reasonable costs for purchase and installation of a water-measuring device for any farm use permit issued by the director after July 1, 2003; however, for permit applications submitted to the division prior to December 31, 2002, no charge shall be made for such costs; and

(E) Shall issue an annual progress report on the status of water-measuring device installation.

(3) Any person who desires to commence a farm use for which a permit is issued after July 1, 2003, shall not commence such use prior to the installation of a water-measuring device by the commission.

(4) Subject to the provisions of subparagraph (C) of paragraph (2) of this subsection, after July 1, 2009, no one shall use water for a farm use required to have a permit under this Code section without having a water-measuring device in operation that has been installed by the commission.

(5) Employees or agents of the commission are authorized to enter upon private property at reasonable times to conduct the duties of the commission under this subsection.

(6) Any reports of amounts of use for recreational purposes under this Code section shall be compiled separately from amounts reported for all other farm uses.

(n) In the consideration of applications for permits which if granted would authorize the withdrawal and transfer of surface waters across natural basins, the director shall be bound by the following requirements:

(1) The director shall give due consideration to competing existing uses and applications for permits which would not involve interbasin transfers of surface water and, subject to subsection (e) of this Code section, shall endeavor to allocate a reasonable supply of surface waters to such users and applicants;

(2) The director shall provide a press release regarding the proposed issuance of all permits authorizing such interbasin transfer of surface waters to newspapers of general circulation in all areas of the state which would be affected by such issuance. The press release shall be provided at least seven days before the issuance of these permits. If the director should determine that sufficient public interest warrants a public hearing on the issuance of these permits, he shall cause such a hearing to be held somewhere in the area affected prior to the issuance of these permits.

(o)(1) Except as otherwise provided in subsection (l) of this Code section for emergency orders, any person who is aggrieved or adversely affected by any order or action of the director pursuant to this Code section shall, upon petition within 30 days after the issuance of such order or the taking of such action, have a right to a hearing before an administrative law judge appointed by the Board of Natural Resources. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the

"Georgia Administrative Procedure Act," and the rules and regulations adopted by the board pursuant thereto. Any administrative law judge so appointed by the board shall fully meet and qualify as to all applicable conflict of interest requirements provided for in Section 304(h)(2)(D) of the Federal Water Pollution Control Act of 1972, as amended, and the rules, regulations, and guidelines promulgated thereunder. The decision of the administrative law judge shall constitute the final decision of the board. Any party to the hearing, including the director, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50, including the right to seek judicial review in the superior court of the county of the applicant's or permittee's residence.

(2) Persons are "aggrieved or adversely affected" where the challenged action has caused or will cause them injury in fact and where the injury is to an interest within the zone of interests to be protected or regulated by the statutes that the director is empowered to administer and enforce. In the event the director asserts in response to the petition before the administrative law judge that the petitioner is not aggrieved or adversely affected, the administrative law judge shall take evidence and hear arguments on this issue and thereafter make a ruling on this issue before continuing with the hearing. The burden of going forward with evidence on this issue shall rest with the petitioner. (Ga. L. 1977, p. 368, § 3; Ga. L. 1982, p. 3, § 12; Ga. L. 1982, p. 2304, § 1; Ga. L. 1983, p. 3, § 9; Ga. L. 1984, p. 22, § 12; Ga. L. 1984, p. 404, § 2; Ga. L. 1988, p. 1694, § 1; Ga. L. 1994, p. 863, § 2; Ga. L. 1995, p. 706, § 2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 4, § 12; Ga. L. 2003, p. 813, § 2.)

## **REGULATED REASONABLE USE OF GROUNDWATER**

### **12-5-96. Permits to withdraw, obtain, or use ground water; water conservation plan; factors to be considered; notice of official acts; administrative hearings; judicial review.**

(a) (1) No person shall withdraw, obtain, or utilize ground waters in excess of 100,000 gallons per day for any purpose unless such person shall first obtain a permit therefor from the division.

(2) Any person applying for a permit or a permit modification under this part which indicates an increase in water usage, except for permits for solely agricultural usage, shall also submit with such application a water conservation plan approved by the director and based on guidelines issued by the director. The director shall collect and disseminate such technical information as the director deems appropriate to assist in the preparation of water conservation plans.

(b) When sufficient evidence is provided by the applicant that the water withdrawn or used from the ground is not consumptively used, a permit therefor shall be issued by the division without a hearing and without the conditions provided in subsection (c) of this Code section. Applications for such permits shall set forth such facts as the division shall deem necessary to enable it to establish and maintain adequate records of all water uses.

(c) In all cases in which sufficient evidence of a nonconsumptive use is not presented by the applicant, the division shall notify the applicant of the division's proposed action concerning such permit and shall transmit with such notice a copy of any permit it proposes to issue to the applicant, which permit will become final unless a request for a hearing is made within 30 days from the date of service of such notice. The division shall have the power:

(1) To grant such permit with such conditions as the division deems necessary to implement the regulations adopted pursuant to Code Section 12-5-95;

(2) To grant any temporary permit for such period of time as the division shall specify where conditions make such temporary permit essential, even though the action allowed by such permit may not be consistent with the regulations of the Board of Natural Resources;

(3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected;

(4) To deny such permit if the application therefor or the effect of the water use proposed or described therein upon the water resources of the area is found to be contrary to public interest. Any water user wishing to contest the proposed action shall be entitled to a hearing upon request therefor.

(d) In adopting any regulations pursuant to Code Section 12-5-95 and in considering permit applications, revocations, or modifications under this Code section, the Board of Natural Resources or the division shall consider:



- (1) The number of persons using an aquifer and the object, extent, and necessity of their respective withdrawals or uses;
  - (2) The nature and size of the aquifer;
  - (3) The physical and chemical nature of any impairment of the aquifer adversely affecting its availability or fitness for other water uses, including public use;
  - (4) The probable severity and duration of such impairment under foreseeable conditions;
  - (5) The injury to public health, safety, or welfare which would result if such impairment were not prevented or abated;
  - (6) The kinds of businesses or activities to which the various uses are related;
  - (7) The importance and necessity of the uses, including farm uses, claimed by permit applicants under this Code section, or of the water uses of the area under Code Section 12-5-95, and the extent of any injury or detriment caused or expected to be caused to other water uses, including public use;
  - (8) Diversion from or reduction of flows in other watercourses or aquifers;
  - (9) A regional water development conservation and sustainable use plan, where applicable; and
  - (10) Any other relevant factors.
- (e) The division or a party designated by the division may develop a regional water development and conservation plan for the state's major aquifers or any portion thereof. Such plan shall include water development, conservation, and sustainable use and shall be based on detailed scientific analysis of the aquifer, the projected future condition of the aquifer, and current demand and estimated future demands on the aquifer. Such plan shall serve to promote the conservation and reuse of water within the state, guard against a shortage of water within the state and region, and promote the efficient use of the water resource and shall be consistent with the general welfare and public interest of the state as provided in Code Section 12-5-91. Upon adoption of a regional plan, all permits issued by the division shall be consistent with such plan. The term of any permit and all provisions of any permit for which an application for renewal is made prior to the completion of any regional plan shall be extended at least until the completion of such plan. Applications for new permits shall be subject to review by the division and the division may issue such permits as appropriate pending completion of a regional plan.
- (f) The division shall give notice of all its official acts which have or are intended to have general application and effect to all persons on its mailing list on the date when such action is taken. It shall be the duty of the division to keep such a mailing list on which it shall record the name and address of each person who requests a listing thereon, together with the date of receipt of such request. Any person may, by written request to the division, ask to be permanently recorded on such a mailing list.
- (g) Any hearing pursuant to this Code section shall be held in accordance with subsection (c) of Code Section 12-2-2 and also, for the purposes of this part, shall be specifically subject to subsection (a) of Code Section 50-13-19.
- (h) (1) Except as otherwise provided in Code Section 12-5-102 for emergency orders, any person who is aggrieved or adversely affected by any order or action of the director pursuant to this Code section shall, upon petition within 30 days after the issuance of such order or the taking of such action, have a right to a hearing before an administrative law judge appointed by the Board of Natural Resources. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules and regulations adopted by the board pursuant thereto. Any administrative law judge so appointed by the board shall fully meet and qualify as to all applicable conflict of interest requirements provided for in Section 304(h)(2)(D) of the Federal Water Pollution Control Act Amendments of 1972, as amended, and the rules, regulations, and guidelines promulgated thereunder. The decision of the administrative law judge shall constitute the final decision of the board. Any party to the hearing, including the director, shall have a right of judicial review thereof in accordance with Chapter 13 of Title 50, including the right to seek judicial review in the superior court in the county of the applicant's or permittee's residence. For the purposes of this part, such review is also specifically subject to subsection (a) of Code Section 50-13-19.
- (2) Persons are "aggrieved or adversely affected" where the challenged action has caused or will cause them injury in fact and where the injury is to an interest within the zone of interests to be protected or regulated by the statutes that the director is empowered to administer and enforce. In the event the director asserts in response to the petition before the

administrative law judge that the petitioner is not aggrieved or adversely affected, the administrative law judge shall take evidence and hear arguments on this issue and thereafter make a ruling on this issue before continuing with the hearing. The burden of going forward with evidence on this issue shall rest with the petitioner. (Ga. L. 1972, p. 976, § 6; Ga. L. 1973, p. 1273, §§ 10-15; Ga. L. 1982, p. 3, § 12; Ga. L. 1988, p. 1694, §§ 4, 5; Ga. L. 1992, p. 6, § 12; Ga. L. 1994, p. 863, § 3; Ga. L. 1995, p. 706, §§ 3, 4.)

**12-5-105. Permits for farm uses; notice of transfer or modification in use or capacity; nonuse; suspension or modification; priority uses; reporting and measuring water withdrawals; no effect on existing common or statutory law.**

(a) Notwithstanding any provisions of Code Section 12-5-95, 12-5-96, or 12-5-97 to the contrary, a permit to withdraw, obtain, or utilize ground waters for farm uses, as that term is defined by paragraph (5.1) of Code Section 12-5-92, shall be issued by the director to any person when the applicant submits an application which provides reasonable proof that the applicant's farm use of ground water occurred prior to July 1, 1988, and when such application is submitted prior to July 1, 1991. If submitted prior to July 1, 1991, an application for a permit to be issued based upon farm uses of ground water occurring prior to July 1, 1988, shall be granted for the withdrawal of ground water at a rate of withdrawal equal to the greater of the operating capacity in place for withdrawal on July 1, 1988, or, when measured in gallons per day on a monthly average for a calendar year, the greatest withdrawal capacity during the five-year period immediately preceding July 1, 1988. If submitted after July 1, 1991, or, regardless of when submitted, if it is based upon a withdrawal of ground water for farm uses occurring or proposed to occur on or after July 1, 1988, an application shall be subject to evaluation and classification pursuant to Code Sections 12-5-96 and 12-5-97, but a permit based upon such evaluation and classification shall be issued to ensure the applicant's right to a reasonable use of such ground water. Any permit issued pursuant to this Code section shall be further conditioned upon the requirement that the permittee shall provide, on forms prescribed by the director, information relating to a general description of the lands and number of acres subject to irrigation and the permit; the name and address of the permittee; a description of the general type of irrigation system used; well construction; and pump information, including rated capacity, pump setting depth, and power information.

(b) Notwithstanding any provisions of Code Section 12-5-95, 12-5-96, or 12-5-97 to the contrary, permits to withdraw, obtain, or utilize ground waters for farm uses, as that term is defined in paragraph (5.1) of Code Section 12-5-92, whether for new withdrawals or under subsection (a) of this Code section, shall be governed as follows:

(1) A permit issued, modified, or amended after July 1, 2003, for farm uses shall have annual reporting requirements and no term and may be transferred or assigned to subsequent owners of the lands which are the subject of such permit; provided, however, that the division shall receive written notice of any such transfer or assignment, and any modification in the use or capacity conditions contained in the permit or in the lands which are the subject of such permit shall require the permittee to submit an application for review and approval by the director consistent with the requirements of this part;

(2) Permits for farm use, after initial use has commenced, shall not be revoked, in whole or in part, for nonuse;

(3) The director may suspend or modify a permit for farm use if he or she should determine through inspection, investigations, or otherwise that the quantity of water allowed would prevent other applicants from reasonable use of ground water beneath their property for farm use;

(4) During emergency periods of water shortage, the director shall give first priority to providing water for human consumption and second priority to farm use; and

(5) The importance and necessity of water for industrial purposes are in no way modified or diminished by this Code section.

(b.1)(1) The State Soil and Water Conservation Commission shall have the duty of implementing a program of measuring farm uses of water in order to obtain clear and accurate information on the patterns and amounts of such use, which information is essential to proper management of water resources by the state and useful to farmers for improving the efficiency and effectiveness of their use of water, meeting the requirements of paragraph

(1) of subsection (b) of this Code section, and improving water conservation. Accordingly, the State Soil and Water Conservation Commission shall on behalf of the state purchase, install, operate, and maintain water-measuring devices for farm uses that are required by this Code section to have permits. As used in this paragraph, the term "operate" shall include reading the water-measuring device, compiling data, and reporting findings.

(2) For purposes of this subsection, the State Soil and Water Conservation Commission:

(A) May conduct its duties with commission staff and may contract with other persons to conduct any of its duties;

(B) May receive and use state appropriations, gifts, grants, or other sources of funding to carry out its duties;

(C) In consultation with the director, shall develop a priority system for installation of water-measuring devices for farm uses that have permits as of July 1, 2003. The commission shall, provided that adequate funding is received, install and commence operation and maintenance of water-measuring devices for all such farm uses by July 1, 2009; provided, however, that the commission shall not install a water-measuring device on any irrigation system for such a farm use if such irrigation system is equipped with a meter as of July 1, 2003, and such meter is determined by the commission to be properly installed and operable, but any subsequent replacement or maintenance of such an irrigation system that necessitates replacement of such meter shall necessitate installation of a water-measuring device by the commission;

(D) May charge any permittee the commission's reasonable costs for purchase and installation of a water-measuring device for any farm use permit issued by the director after July 1, 2003; however, for permit applications submitted to the division prior to December 31, 2002, no charge shall be made for such costs; and

(E) Shall issue an annual progress report on the status of water-measuring device installation.

(3) Any person who desires to commence a farm use for which a permit is issued after July 1, 2003, shall not commence such use prior to the installation of a water-measuring device by the commission.

(4) Subject to the provisions of subparagraph (C) of paragraph (2) of this subsection, after July 1, 2009, no one shall use water for a farm use required to have a permit under this Code section without having a water-measuring device in operation that has been installed by the commission.

(5) Employees or agents of the commission are authorized to enter upon private property at reasonable times to conduct the duties of the commission under this subsection.

(6) Any reports of amounts of use for recreational purposes under this part shall be compiled separately from amounts reported for all other farm uses.

(c) Nothing in this Code section shall be construed as a repeal or modification of Code Section 12-5-104. (Ga. L. 1972, p. 976, § 13; Ga. L. 1973, p. 1273, § 26; Ga. L. 1982, p. 2306, § 1; Ga. L. 1988, p. 1694, § 8; Ga. L. 2003, p. 813, § 3.)

## **PUBLIC TRUST DOCTRINE FOR TIDEWATERS**

### **52-1-2. Legislative findings and declaration of policy.**

The General Assembly finds and declares that the State of Georgia became the owner of the beds of all tidewaters within the jurisdiction of the State of Georgia as successor to the Crown of England and by the common law. The State of Georgia continues to hold title to the beds of all tidewaters within the state, except where title in a private party can be traced to a valid Crown or state grant which explicitly conveyed the beds of such tidewaters. The General Assembly further finds that the State of Georgia, as sovereign, is trustee of the rights of the people of the state to use and enjoy all tidewaters which are capable of use for fishing, passage, navigation, commerce, and transportation, pursuant to the common law public trust doctrine. Therefore, the General Assembly declares that the protection of tidewaters for use by the state and its citizens has more than local significance, is of equal importance to all citizens of the state, is of state-wide concern, and, consequently, is properly a matter for regulation under the police powers of the state. The General Assembly further finds and declares that structures located upon tidewaters which are used as places of habitation, dwelling, sojournment, or residence interfere with the state's proprietary interest or the

public trust, or both, and must be removed to ensure the rights of the state and the people of the State of Georgia to the use and enjoyment of such tidewaters. It is declared to be a policy of this state and the intent of this article to protect the tidewaters of the state by authorizing the commissioner of natural resources to remove or require removal of certain structures from such tidewaters in accordance with the procedures and within the timetable set forth in this article. (Code 1981, § 52-1-2, enacted by Ga. L. 1992, p. 2317, § 1.)